CAMMINO DIRITTO
Rivista di informazione giuridica

Articolo Divulgativo

BREXIT AND EUROPEAN UNION: LEGAL PERSPECTIVES AND POSSIBLE INTERNATIONAL CONSEQUENCES

Brexit could be a drastic consequence for United Kingdom but, at the same time, an opportunity to promote UE integration, a wide wave to ride on carefully.

Luigimaria Riccardi (redattore Salvatore Aromando)
PUBBLICO - INTERNAZIONALE
Articolo divulgativo - ISSN 2421-7123

Pubblicato, Giovedì 15 Dicembre 2016

Cammino Diritto
ISSN 2421-7123

1) Introduction; 2) The relationship between UK and EU: a frame; 3) An analysis of Art. 50 of TEU; 4) Brexit and its potential solutions; 5) Conclusions.

1) Introduction

On the 23rd of June 2016, a referendum on EU membership was held in United Kingdom in which, a majority of these voting –52% –, voted for UK to leave the EU. This event, surely represents a *corner stone* for the European integration process and, at the same time, a drastic route change in the European Union economic, financial and politic structure.

2) *The relationship of UK and EU: a frame*

EU experts know that the relationships between the United Kingdom and the European Union have been characterized by Treaties or Protocols, beetween UK and other States (like Denmark), based on specific european politics or economic decisions.

It is possible to mention the mechanism adopted by Maastricht Treaty, about economic and monetary Union (successfully confirmed by the Lisbon Treaty).

As reported in alleged Protocols, UK and Denmark opted to remain out from the "*third step*" of the Union (effective from January 1 1999).

This step, referred to european monetary system's introduction (effective from January 2 2002) and the restrictive respect of the "*convergence criteria*" (in accordance with art. 140 of TFEU and the Prot. No. 13)

An other example of this relationship, is confirmed by the application or the limits related to the application of the Charter of Fundamental Rights for UK. It is relevant to mention

Cammino Diritto
ISSN 2421-7123

the Prot. No. 21, concerning about the special status of UK (and Ireland), in a more specific way, the Freedom, Security and Justice Area (AFSJ).

With regard to this Protocol, the Member States are extraneous to the applications of the Third Part, Title V of TFEU, concerning the control of external borders, asylum, immigration policy and the Judicial, Civil and Criminal matter Cooperation. Moreover, these States show their '*opting in*' interest, in order to determine measures.

At the same time, UK played an important role for the creation European Union. It has to be considered one of the most important partner in the economic, politic and social fields, related to the Internal and External actions of the EU. It means that, as predictable, if UK completes its *exit* procedure, using the art. 50 of TEU, there will be several consequences on the economic and financial structure of EU. For this complicated point, it is fundamental to precise that there will be several solutions. .

3) An analysis of art. 50 of TEU

First of all, there could be several complications about the application of art. 50 of TEU, due to the lack of precedents and the multitude of interpratations referred to the legislative provisions overlapped. It contains 5 paragraphs:

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

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

Cammino Diritto
ISSN 2421-7123

Parliament." [More precisely, Article 218(3) states that *"The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team."*]

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

"4. *For the purposes of paragraphs 2 and 3, the member of the European Council or the Council representing the withdrawing Member State, shall not participate in the discussions of the European Council or in decisions concerning it. A qualified majority shall be defined, in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union*."

"5. *If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49*.

At this moment, no one can know what shape a withdrawal agreement between UK and EU would take. The picture will only start to become clearer if UK Government determines to trigger art. 50 and decides what kind of agreement it would like to try to achieve for the negotiations with the EU. Current alternatives to EU membership are set out. Once validly triggered, unless extended unanimously by the other EU members. The EU Treaties would cease to apply to UK on the earlier, to occur of the signing of any "*withdrawal agreement*" between UK, EU and the two year anniversary of the art. 50 notification. It is important that a withdrawal agreement is reached before the deadline (two years from the activation of the procedure stated by art. 50). While the Treaties automatically cease to apply to UK upon Brexit, the status of Regulations and the laws transposing post Brexit's Directives are not clear and, not less important, that the principles of the Treaties. Then, if it highlights to avoid conflicts of interest, UK is not allowed to participate in European Council or Council discussions as EU member state,in

Cammino Diritto
ISSN 2421-7123

relation to Brexit-related matters. Finally, UK would be subject to the full accession procedure, set out in Article 49, that applies to any new prospectives Member States, in the event that they decided to re-join the EU after having left it.

4) Brexit and its potential solutions

As some experts described during these days, there will be several alternative solutions.

The first one could be individuated in the possibility for UK to become a *NO EU-EES M*ember (Economic European Space), such as the Norway, to earn the opportunity to remain in the european dimension of several fields such as the social policy, consumers' protection, the protection of environment and the legislative provisions on the companies and firms. The weak point of this solution could be identified on the doubt as to whether UK would accept the free movement of persons (as the other *NO EU-EES* members), given that the ability for the UK to control immigration is considered an important political reason for the Leave campaign. On account of this, the "*Norwegian model*" may not be the one followed by the UK.

The second one, is the adoption of the "*Switzerland model*", through which UK could negotiate and perfect (as Switzerland does) several bilateral deals with the European Union such as EFTA members (European Free Trade Association). However, this solution shows a lot of complications, most of all, for the financial and economic sectors, in particular because the UK is still the heart of financial services.

The third one, could be the possibility for UK to become a *Third State* for the European Union and, by choosing this option, it could negotiate international agreements such as the recent ones with Canada or the United States of America (respectively the *CETA* ad the *TTIP*). Despite the importance of the deals and the major political coherence with the referendum outcomes, it would be a very *return to origin* for the country, because UK has a strong interest to remain in the European Union's internal market and not the contrary.

Cammino Diritto
ISSN 2421-7123

5) Conclusions

In conclusion, if UK gets out without proposing alternative and effective deals, it would mean a more restrictive return of the legal system related to people's movement, capitals and all the commercial partnerships and agreements guided by the WTO (World Trade Organization). Negotiations and evolutions need to be followed, to understand its consequences in both international and european dimensions.

Bibliography:

VILLANI U., *Istituzioni di Diritto dell'Unione Europea,* in, Collana di Studi sull'Integrazione Europea vol.1, Cacucci Editore, Bari, 2014.

Osservatorio sulla Brexit, *Il Consiglio di Stato riconosce un limite ai poteri,* in, www.Federalismi.it, Osservatorio Brexit 9 Novembre 2016 , n. 22/2016