EU TRADE POLICY AFTER BREXIT. PROVISION OF PROFESSIONAL SERVICES

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Abstract

The accession to the European Union has been an irreversible and unique process until the Lisbon Treaty and the recent United Kingdom withdrawal.

The legal consequences of such withdrawal cannot be analysed in a separated way from the economic and social ones or from the future United Kingdom status - third country as the European Commission stated - which supposes the application of the same regime as for the actual third countries in the field of the common commercial policy.

The new generation of the trade agreements negotiated with developed third countries such as the USA, Canada (already concluded), New Zealand, Australia, Singapore, or countries as Chile and Indonesia, contains specific dispositions on the provision of professional services with an important economic input facilitating the free movement of persons. The European Union has an exclusive competence to conclude these international agreements in accordance with the art. 3 of the Treaty on functioning of the European Union, but it remains under discussion and analysis its competence to include the recognition of the professional qualifications within these agreements or to conclude a separate one on this matter.

Keywords: *United Kingdom withdrawal, international trade agreements, provision of professional services, recognition of professional qualifications, exclusive competence.*

1. Introduction

1.1. Legal framework

The free movement of persons as fundamental human right is guaranteed and regulated at European Union level and the provision of professional services is one of the important elements of this freedom.

The provision of professional services is linked with the regulation of the professions by the Member States and the recognition of the professional qualifications under the Directive 2005/36/EC; the European Commission recommends to the Member States to undertake certain reforms in the field of profession regulation for facilitating the free movement of persons and economic development. So, in this context, the provision of professional services by third countries providers must be allowed respecting the equal treatment principle, the fundamental liberties of the European Union (EU), the high-level of the providers training (the training for seven professions is harmonised at the Member States level by the Directive 2005/36/EC), the quality of provided services and the protection of consumers.

According with the art.53 and art.26 of the Treaty on functioning of the European Union (TFEU), the recognition of the professional qualifications is covered by the shared competence between Union and Member States and thus a specific international agreement must be concluded by both actors being a mixed agreement. It seems that the European Commission considers exclusive the competence of the Union to conclude an international treaty on recognition of professional qualifications since such legal document will be necessary and efficient only in the field of the commercial relations with a third country.

Nowadays, European Commission confirms that "The withdrawal of the United Kingdom does not affect decisions on the recognition of professional qualifications obtained in the United Kingdom taken before the withdrawal date based on Directive 2005/36/EC by an EU-27 Member State. As of the withdrawal date, United Kingdom nationals will be third country nationals and hence Directive 2005/36/EC no longer apply to them". The United Kingdom (UK) Government states that "The UK will ensure that professionals arriving in the UK from the EEA after the exit date will have a means to seek recognition of their qualifications. However, this will differ from the current arrangements." (EEA - European Economic Area).

The conclusion of an international trade agreement by the European Union with the United Kingdom including provisions on the professional services must be realized under the existing good practices; at the same time, it is necessary to take into account the former status of the United Kingdom without creating a more favourable regime as it happened until now in relation with the application of EU treaties (see the opt out provisions allowed to UK in different fields[1]).

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[1] Oana-Mihaela Salomia, Augustin Mihalache, "Principiul egalității statelor membre în cadrul Uniunii Europene, in *Revista "Dreptul*", no 1 (2016): 172.

2. Content

2.1. Recognition of the professional qualifications

The draft of the withdrawal agreement contains dispositions regarding the recognition of the professional qualifications done before the end of the transition period, which "shall maintain its effects in the respective State, including the right to pursue their profession under the same conditions as its nationals[2], where such recognition was made in accordance" with the Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC and the Council Directive 74/556/EEC of 4 June 1974 laying down detailed provisions concerning transitional measures relating to activities, trade in and distribution of toxic products and activities entailing the professional use of such products including activities of intermediaries.

Ongoing procedures on the recognition of professional qualifications will be solved according to the European law mentioned above.

Nowadays, according with the withdrawal draft agreement, the rules regarding the recognition of the professional qualifications are the following:

"As of the withdrawal date, United Kingdom nationals will be third country nationals and hence Directive 2005/36/EC no longer applies to them. It follows that:

- The recognition of professional qualifications of United Kingdom nationals in an EU-27 Member State will be governed by the national policies and rules of that Member State, irrespective of whether the qualifications of the United Kingdom national were obtained in the United Kingdom, in another third country or in an EU-27 Member State.
- The temporary or occasional provision of services by United Kingdom nationals in an EU-27 Member State, even if they are already legally established in an EU-27 Member State will be governed by the national policies and rules of that Member State.

Concerning EU-27 nationals, qualifications obtained in the United Kingdom (hereafter "UK professional qualifications") as of the withdrawal date are third country qualifications for the purpose of EU law. Recognition of such a qualification is no longer covered by the recognition regime of Directive 2005/36/EC (both in respect of EU citizens and of United Kingdom nationals) but, in accordance with Article 2(2) of Directive 2005/36/EC, the recognition will be governed by the national policies and rules of each of the EU-27 Member States."[3]

For the UK's Government, "The proposed new system of recognition of professional qualifications will:

- Protect recognition decisions that have already made; allow applications for recognition which have been made before exit to be concluded under the same rules as far as possible; and allow individuals to complete temporary and occasional service provision which started before exit.
- Retain a general system for recognition where UK regulators will be required to recognise EEA and Swiss qualifications which are of an equivalent standard to UK qualifications in scope, content and level.
- No longer include certain obligations on regulators such as offering compensation measures, partial access and temporary and occasional provision of services. However, it will leave regulators with the discretion to decide how to treat non-equivalent EEA or Swiss qualifications.
- Correct deficiencies in the Regulation of Professional Qualifications Regulations so that the system that is being retained can still function effectively and professionals will retain a route for recognition of their professional qualification"[4].

In the same way, "EEA lawyers will be able to practise in England and Wales under the regulatory arrangements and rules that apply to lawyers from other third countries. However, this change will mean:

- EEA and Swiss lawyers will no longer be able to provide legal activities normally reserved to advocates, barristers or solicitor under their home state professional title in England/Wales and Northern Ireland. (Reserved activities are: the exercise of a right of audience, the conduct of litigation, reserved instrument activities (conveyancing), probate activities, notarial activities and the administration of oaths)
- EEA and Swiss lawyers will no longer be able to seek admittance to the English/Welsh or Northern Irish profession based on experience"[5].

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[2] Augustin Fuerea, "BREXIT – trecut, prezent, viitor – mai multe întrebări și tot atâtea răspunsuri posibile-", Curierul Judiciar, no. 12 (2016): 633.

[3] European Commission Directorate-General For Internal Market, Industry, Entrepreneurship And Smes, Brussels, 21 June 2018, Notice To Stakeholders: Withdrawal of the United Kingdom and EU Rules in the field of regulated professions and the recognition of professional qualifications

[4] https://www.gov.uk/government/publications/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal#recognition-of-professional-qualifications accessed March 16, 2019. '' The UK has reached agreements with Iceland, Liechtenstein and Norway, and with Switzerland, to address separation issues which include specific arrangements for the recognition of professional qualifications for these countries' nationals.''

[5] https://www.gov.uk/government/publications/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal#recognition-of-professional-qualifications,

In Romania if the *no deal* scenario applies, the recognition of professional qualifications will be done considering the status of British citizens – if they obtain or not a legal status like the EU27 citizens[6]. As already mentioned, the Romanian competent authorities will continue to recognize the decisions pronounced before 29 March 2019 and the ongoing procedures will be solved according to the EU law in this matter[7].

The Directive 2005/36/EC has introduced three systems of the recognition of the professional qualifications in order to exercise a regulated profession in a Member State[8] but only for seven professions there are specific provisions included for the harmonisation of the training at the level of all Member States; the qualifications for these professions are automatically recognised by the competent authorities of the Member States whereas the qualifications for the other regulated professions are recognized on the general system of recognition or on the automatic recognition of the experience mentioned by the Directive. Considering the exercise of the internal competence of the Union in this domain we appreciate that an external competence could be allowed at supranational level[9]; that can be a reason for accepting this kind of external competence. Apart from that, the shared competences between EU and Member States are defined as exclusive competencies based on their exercise while the exclusive competences mentioned by the art. 3 TEU – Treaty on the European Union are defined as exclusive competencies based on their nature[10].

In this context, if a withdrawal agreement will be concluded, "During any implementation period, arrangements would be put in place with partner countries so that the UK is treated as an EU member state for the purposes of international agreements, including trade agreements…In the event of a 'no deal', there will be no implementation period. In this scenario, the government (UK) will seek to bring into force bilateral UK-third country agreements from exit day, or as soon as possible thereafter…In the event of a 'no deal', EU trade agreements will cease to apply to the UK when we leave the EU. Our intention (UK's Government) is that the effects of new bilateral agreements will be identical to, or substantially the same as, the EU agreements they replace."[11].

The withdrawal agreement doesn't contain any disposition regarding the provision of the professional services, which will be regulated through a possible separate international agreement between European Union and United Kingdom.

This kind of agreement will be negotiated and concluded by the EU in the field of the common commercial policy which is included into the exclusive competence of the Union according with the art.3 para.1 letter (e) of the Treaty on the functioning of the European Union or with para. 2[12]: "The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope".

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accessed accessed March 16, 2019: "There will be a transitional period until December 2020 for Registered European Lawyers to transfer to UK title. During the transitional period Registered European Lawyers will be able to continue to practice".

[6] The Romanian Government has adopted at 19 March 2019 a Memorandum on the rights of the Britain citizens allowe by the Romanian authorities – "MEMORANDUM cu tema: Plan de măsuri privind reglementarea statutului cetățenilor britanici rezidenți în România în contextul retragerii Marii Britanii din Uniunea Europeană fără un acord" - http://gov.ro/ro/guvernul/sedinte-guvern/informatie-de-presa-privind-proiectele-de-acte-normative-aprobate-sau-de-care-guvernul-a-luat-act-in-edinta-guvernului-romaniei-din-19-martie-2019 accessed March 25, 2019.

[7] See, for France – "CHAPITRE II EXERCICE D'UNE PROFESSION SOUMISE AU RESPECT DE CONDITIONS" from *Ordonnance no 2019-76 du 6 février 2019 portant diverses mesures relatives à l'entrée, au séjour, aux droits sociaux et à l'activité professionnelle, applicables en cas d'absence d'accord sur le retrait du Royaume-Uni de l'Union européenne,* published in Journal Officiel de la République Française, 7 février 2019.

[8] Adrian Iordache, Recunoașterea profesională pentru profesii reglementate, Conference proceedings: Conferința internațională „*Fair recognition: best practices and innovative approaches*" (Ed. Institutul de Stat „Glavexpertcenter", Moscova, 2015): 47 – see "the effects of the professional qualifications".

[9] ECLI:EU:C:1971:32, Commission of the European Communities v Council of the European Communities. - European Agreement on Road Transport, 31 March 1971, case 22-70: "15. to determine in a particular case the community' s authority to enter into international agreements, regard must be had to the whole scheme of the treaty no less than to its substantive provisions . 16 such authority arises not only from an express conferment by the treaty - as is the case with articles 113 and 114 for tariff and trade agreements and with article 238 for association agreements - but may equally flow from other provisions of the treaty and from measures adopted, within the framework of those provisions, by the community institutions . 17 in particular, each time the community, with a view to implementing a common policy envisaged by the treaty, adopts provisions laying down common rules, whatever form these may take, the member states no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules . 18 as and when such common rules come into being, the community alone is in a position to assume and carry out contractual obligations towards third countries affecting the whole sphere of application of the community legal system".

See Olivier Costa et Nathalie Brack, *Le fonctionnement de l'Union européenne* (troisième édition revue et augmentée, Editions de l'Université de Bruxelles, Bruxelles, 2017), 304 – "la théorie des pouvoirs implicites".

See Mihaela-Augustina Dumitrașcu, *Dreptul Uniunii Europene și specificitatea acestuia* (C.H. Beck, București, 2015) ,147.

[10] Stéphane Leclerc, *Les institutions de l'Union européenne* (5e édition, Gualino Lextenso éditions, 2014), 85.

[11] https://www.gov.uk/government/publications/existing-free-trade-agreements-if-theres-no-brexit-deal/existing-free-trade-agreements-if-theres-no-brexit-deal accessed March 16, 2019

See *Brexit Brief: Options for the UK's future trade relationship with the EU*

https://www.instituteforgovernment.org.uk/sites/default/files/publications/Brexit%20Options%20A3%20November%20update.pdf

[12] See Mihaela-Augustina Dumitrașcu, Oana-Mihaela Salomia, "The European Union as international actor: the specificity of its external competencies" in *Analele Universității din București, Seria Drept 2017* (Ed. C.H. Beck): 107.

2.2. Provisions of services

The provision of services is regulated at the EU level through the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market[13] which "establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services" (art. 1.1)[14].

Regarding the application of this Directive, the UK Government informs the citizens that "UK businesses providing services in the EEA would no longer be covered by the EU Services Directive. As a result, countries in the EEA could treat them in the same way as they treat third country service providers. In many EEA countries, the regime for third countries has different requirements. This could result in additional legal and administrative barriers for UK firms, such as requirements based on nationality, re-submitting information to regulators and potential loss of access to any online portal to complete mandatory applications and licenses where this is only available to EEA nationals"[15]. Also, "when the UK leaves the EU, EEA businesses will be treated like other third country service providers as the Regulations will need to be amended to comply with the UK's commitments under World Trade Organisation rules"[16].

The document „*Internal EU27 preparatory discussions on the framework for the future relationship: "Mobility"* elaborated by the European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU and presented by the Council at Brussels, 21 February 2018 mentioned the implications for mobility regarding Schengen border crossing, Visa regime, Migration, Trade in services (mobility related aspects), Social security coordination. The main consequence of the UK withdrawal is the "GATS fall-back" which supposes:

"Professional mobility remains possible for service providers falling within the Mode 4[17] categories defined in GATS, for the sectors covered

- For those persons, labour market tests ("economic needs tests") and numerical restrictions could be partially avoided
- Service suppliers and their employers do not benefit from social security coordination or any right to equal treatment
- Labour market rules of individual Member States apply in full
- Lack of recognition (e.g. of qualifications) may imply supply of a service only possible based on host state qualifications
- Mobility of persons not fitting within GATS follows the regime applicable to third-country nationals — partly harmonised (for transferees) and partly set by individual Member States."

GATS does not covered: "Recently recognised categories of skilled service providers (trainees, independent professionals, various short-term business visitors); Service providers with low- and medium-level qualifications; Subcontracting or employment-agency type work; Anyone who is not a service provider or an investor (e.g. jobseekers, workers, students)".

3. International trade agreements

During the last years, the European Union started to negotiate international commercial agreements with third countries which have a developed economy such as the USA, Canada, New Zealand, Australia, Singapore etc. which include specific provisions on the professional services; these agreements strengthen the EU economic position worldwide and increase the growth and competitiveness at Internal Market level. "The EU wants to help the least-developed countries and others to boost their production, diversify their economy and infrastructure, and improve their governance. The EU's trade and development policy emphasises that these countries should have ownership of their own development strategies. They need to implement sound domestic policies and make necessary domestic reforms to stimulate trade and investment, ensure that the poor benefit from trade-led growth and make sure their development is for the long-term"[18].

In the field of the common commercial policy, "There are three main types of agreements:

1. Customs Unions
   - eliminate customs duties in bilateral trade

[13] The Directive has been transposed in Romania by the Government Emergency Ordinance no. 49/2009 approved by the Law no. 68/2010.

[14] See Augustin Fuerea, *Dreptul Uniunii Europene – principii, acțiuni, libertăți* (Universul Juridic, București, 2016), 243.

[15] https://www.gov.uk/government/publications/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal#recognition-of-professional-qualifications, accessed March 17, 2019 : "A 'No Deal' scenario will also mean changes for UK nationals providing services in person into EEA countries, whether on a short term 'fly in, fly out' basis, longer term movement to provide services to clients, or placements within other parts of the business. Businesses should check whether a visa and/or work permit is required and otherwise comply with the immigration controls in place in each Member State where the service is being provided in person".

[16] https://www.gov.uk/government/publications/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal#recognition-of-professional-qualifications accessed March 17, 2019.

[17] https://www.wto.org/english/tratop_e/serv_e/mouvement_persons_e/mouvement_persons_e.htm accessed March 20, 2019: "The movement of natural persons is one of the four ways through which services can be supplied internationally. Otherwise known as "Mode 4", it covers natural persons who are either service suppliers (such as independent professionals) or who work for a service supplier and who are present in another WTO member to supply a service".

[18] http://ec.europa.eu/trade/policy/countries-and-regions/development/ accessed March 13, 2019.

- establish a joint customs tariff for foreign importers.

2. Association Agreements, Stabilisation Agreements, (Deep and Comprehensive) Free Trade Agreements and Economic Partnership Agreements

- remove or reduce customs tariffs in bilateral trade.

3. Partnership and Cooperation Agreements

- provide a general framework for bilateral economic relations
- leave customs tariffs as they are."[19]

Regarding the professional services and recognition of the professional qualification these agreements have included specific dispositions which stated that these aspects will be regulated by a future separated international agreement concluded by the Union. For example, the Free Trade Agreement between the European Union and the Republic of Singapore[20] mentions, in the article 8.16 Mutual Recognition of Professional Qualifications of the SECTION E Regulatory Framework Sub-Section 1 Provisions of General Application that "the relevant professional bodies in their respective territories to develop and provide a joint recommendation on mutual recognition to the Committee on Trade in Services, Investment and Government Procurement established" by the Agreement. "Such a recommendation shall be supported by evidence on:

a) the economic value of an envisaged an agreement on mutual recognition of professional qualifications (hereinafter referred to as "Mutual Recognition Agreement"); and
b) the compatibility of the respective regimes, i.e., the extent to which the criteria applied by each Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers are compatible". After a specific verification of the conformity with the Agreement's provisions, "the Parties shall take necessary steps to negotiate, through their competent authorities or designees authorised by a Party, a Mutual Recognition Agreement".[21]

It is obvious that the Parties are European Union and the Republic of Singapore not the Member States and consequently the Union will conclude the Mutual Recognition Agreement with the Republic of Singapore not the Member States having as legal basis this exclusive competence of the Union for common commercial policy.

We appreciate that such exclusive competence in the field of mutual professional recognition can not be founded on an international trade agreement considering that at internal level this competence is shared with the Member States. The paragraph 6 of the art.207 of TFEU which establishes the uniform principles of the common commercial policy mentions very clear that "6. The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonisation"; the fundamental principle of the EU – principle of conferral of the competences has priority against other specific policy rules of the Union.

On the Agreement mentioned above, the Court of Justice of the European Union stated in its Opinion no 2/15[22] which is the domain of the exclusive competence of the Union[23].

In the light of this Opinion, it seems that the Union could have the exclusive competence to conclude an international agreement on mutual recognition of professional qualifications. The Court did not pronounce on that specific topic which will be regulated in a future separate agreement but on a joint recommendation on the mutual recognition of professional qualifications which will be set up by the competent authorities in Singapore and European Union:

"277. Since it is apparent from this opinion that all the substantive provisions of Chapters 2 to 8 and 10 to 13 of the envisaged agreement **fall within the exclusive competence of the European Union, the**

[19] http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/ accessed March 13, 2019

[20] http://trade.ec.europa.eu/doclib/press/index.cfm?id=1980

accessed March 13, 2019: Brussels, 13 February 2019, "Agreement with Singapore set to give a boost to EU-Asia trade. The trade and investment agreements between the EU and Singapore have today received the approval of the European Parliament. The Parliament has also given its green light to the Partnership and Cooperation Agreement ".

[21] http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151743.pdf accessed March 13, 2019

[22] ECLI:EU:C:2017:376, OPINION 2/15 OF THE COURT (Full Court), 16 May 2017, accessed March 16, 2019.

See Marianne Dony, *Droit de l'Union européenn*e (septième édition revue et augmentée, Editions de l'Université de Bruxelles, Bruxelles, 2018), 662, para. 1159.

[23] https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170052en.pdf, accessed March 16, 2019: "In particular, the Court declares that the EU has exclusive competence so far as concerns the parts of the agreement relating to the following matters: • access to the EU market and the Singapore market so far as concerns goods and services (including all transport services) and in the fields of public procurement and of energy generation from sustainable non-fossil sources; • the provisions concerning protection of direct foreign investments of Singapore nationals in the EU (and vice versa); • the provisions concerning intellectual property rights • the provisions designed to combat anti-competitive activity and to lay down a framework for concentrations, monopolies and subsidies; • the provisions concerning sustainable development (the Court finds that the objective of sustainable development now forms an integral part of the common commercial policy of the EU and that the envisaged agreement is intended to make liberalisation of trade between the EU and Singapore subject to the condition that the parties comply with their international obligations concerning social protection of workers and environmental protection); • the rules relating to exchange of information and to obligations governing notification, verification, cooperation, mediation, transparency and dispute settlement between the parties, unless those rules relate to the field of non-direct foreign investment".

provisions referred to in paragraphs 258 to 267 and 269 to 273 of this opinion also fall within that competence, for the reason set out in the previous paragraph. The same is true of Chapter 17 of the envisaged agreement, in so far as it relates to the Committee on Trade in Goods, the Committee on Sanitary and Phytosanitary Measures and the Committee on Customs."

"267. Chapter 8 of the envisaged agreement, which deals with services, establishment and electronic commerce, envisages, in Article 8.16, **that the competent authorities in the European Union and in Singapore will develop a joint recommendation on the mutual recognition of professional qualifications** and provide it to the Committee on Trade in Services, Investment and Government Procurement. That chapter also provides for cooperation regarding telecommunications (Article 8.48) and electronic commerce (Article 8.61)".

The Court's reference to a joint recommendation not to an international agreement is clear and entitles the Union and the Member States to conclude this agreement based on the recommendation (at the level of the European Union law, the recommendations are not mandatory acts according with the art. 288 TFEU).

A similar provision is included in the draft of the new Agreement with Chile[24] (SECTION B PROVISIONS OF GENERAL APPLICATION Article 5.4 Mutual Recognition of Professional Qualifications – art. 5.4 "3. On receipt of a joint recommendation, the [Committee] shall, within a reasonable time, review the joint recommendation with a view to determining whether it is consistent with this Agreement. 4. When, on the basis of the information provided for in paragraph 2, the joint recommendation has been found to be consistent with this Agreement, the Parties shall take necessary steps to negotiate, through their competent authorities or designees authorised by a Party, a Mutual Recognition Agreement"); "the EU and Chile concluded an Association Agreement in 2002, which includes a comprehensive Free Trade Agreement (FTA) that entered into force in February 2003 covering EU-Chile trade relations"[25].

"As a member of the EU, the UK currently participates in around 40 free trade agreements with over 70 countries. These free trade agreements cover a wide variety of relationships, including:

- Economic Partnership Agreements with developing nations
- Association Agreements, which cover broader economic and political cooperation
- trade agreements with countries that are closely aligned with the EU, such as Turkey and Switzerland
- more conventional free trade agreements"[26].

4. Future relationships between EU and UK

The article 50 of TEU mentions that the withdrawal agreement[27] will be negotiated and concluded "taking account of the framework for its future relationship with the Union"; this provision could determine the elaboration, at the same time, of two international agreements – the withdrawal agreement and the international agreement on the future relationship between UK and EU. In fact, both Parties did not work on such an approach[28] and it would be very difficult for the EU institutions to act on two directions for the first exit from the Union (the Greenland exit in 1984 had not had such major implications). In its Guidelines from 23 March 2018 "the European Council restates the Union's determination to have as close as possible a partnership with the UK in the future. Such a partnership should cover trade and economic cooperation as well as other areas, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy… As regards the core of the economic relationship, the European Council confirms its readiness to initiate work towards a balanced, ambitious and wide-ranging free trade agreement (FTA) insofar as there are sufficient guarantees for a level playing field."[29] This kind of agreement would address the principal domains such as trade in goods, appropriate customs cooperation, trade in services and "access to public procurement markets, investments and protection of intellectual property rights". Also, "the future partnership should include ambitious provisions on movement of natural persons, based on full reciprocity and non-discrimination among Member

[24] EU-Chile Free Trade Agreement EU TEXTUAL PROPOSAL INVESTMENT AND TRADE IN SERVICES TITLE- http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156589.pdf, accessed March 17, 2019.

[25] http://ec.europa.eu/trade/policy/countries-and-regions/countries/chile/ , accessed March 17, 2019.

[26] https://www.gov.uk/government/publications/existing-free-trade-agreements-if-theres-no-brexit-deal/existing-free-trade-agreements-if-theres-no-brexit-deal accessed March 17, 2019.

[27] Maria-Cristina Solacolu, "The Relationship between Euratom and the United Kingdom after Brexit in *The International Conference – CKS 2018 – Challenges of the Knowledge Society* (Bucharest, 11th - 12th May 2018, 12th Edition, "Nicolae Titulescu" University Publishing House, Bucarest): 648: "In the future, thoroughly regulating the process of withdrawal from Euratom – and from the EU – should be a priority, in order to avoid a repetition of the current state of uncertainty. Particular attention should be paid to safety guidelines, ensuring the existence of a supply of time-sensitive medical resources, protecting the rights of EU citizens involved in Euratom projects and clarifying the situation of property rights over facilities and resources housed by the withdrawing state".

[28] Dony, Droit de l'Union européenne, 66, para. 102.

[29] https://www.consilium.europa.eu/media/33458/23-euco-art50-guidelines.pdf accessed la 22.03.2019 accessed March 22, 2019: "At the same time, the European Council has to take into account the repeatedly stated positions of the UK, which limit the depth of such a future partnership. Being outside the Customs Union and the Single Market will inevitably lead to frictions in trade. Divergence in external tariffs and internal rules as well as absence of common institutions and a shared legal system, necessitates checks and controls to uphold the integrity of the EU Single Market as well as of the UK market. This unfortunately will have negative economic consequences, in particular in the United Kingdom".

States, and related areas such as coordination of social security and recognition of professional qualifications"[30].

We appreciate that it is also possible that in the case of hard Brexit/no deal scenario, the future relationship between UK and EU should be formalised through an international trade agreement based on the existing models[31] because the Member States did not have competence to conclude international trade agreements with third countries considering the exclusive competence of EU in this matter. Moreover, "the EU has offered a Free Trade Agreement[32] with zero tariffs and no quantitative restrictions for goods. It proposed close customs and regulatory cooperation and access to public procurement markets, to name but a few examples"[33] and UK did not take a clear position on that suggestion of the EU. Concerning the application of the trade policy rules, "in the event that the UK leaves the EU without a deal, from 11pm GMT on 29 March 2019, many UK businesses will need to apply the same processes to EU trade that apply when trading with the rest of the world"[34].

Conclusions

At 21 March 2019, as reponse of the letter of the UK Prime-minister from 20 March 2019, "The European Council agrees to an extension until 22 May 2019, provided the Withdrawal Agreement is approved by the House of Commons next week. If the Withdrawal Agreement is not approved by the House of Commons next week, the European Council agrees to an extension until 12 April 2019". At 29 March, Members of the Parliament did not vote the Agreement negociated by the Prime-Minister.

In conclusion, the UK withdrawal could determine the elaboration of a new type of an international agreement; EU is competent for concluding such agreements in the field of common commercial policy including provisions on free movement of persons and services.

At the same time it seems to be obvious that the Court of Justice of the European Union did not state very clear on the possibility of the Union to conclude a separate agreement in the field of tjhe recognition of the professional qualifications which facilitates the provision of professional servicies. At this moment, the legal better solution could be the conclusion of a mixed agreementon considering the shared competence in the matter of Internal Market where the recognition of perofessional qualifications is included.

Also, it is possible that UK will benefit from a special treatment in relationship with EU leading to the elaboration of a new type of international agreement; it depends from the reaction of the EU traditional partners like the Member States of EEA or the new ones like Canada, Singapore etc.

The UK Government expresses its intention to continue allowing the same regime for the EU27 citizens as that before the withdrawal based on the principle of reciprocity. The application of the Directive 2005/36/EC continues to be very important for the UK authorities and in fact it seems to be obvious that the minimum training requirements for the seven regulated professions can not be changed neither in EU27 nor in the UK and the automatic recognition of those professional qualifications must be applied by both Parties.

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[30] https://www.consilium.europa.eu/media/33458/23-euco-art50-guidelines.pdf accessed March 22, 2019.

[31] https://www.instituteforgovernment.org.uk/summary-trade-after-brexit accessed March 22, 2019: "The European Commission has suggested that the UK faces a choice for its trading relationship post-Brexit – to become a rule taker with full market access like Norway, or have a standard free trade agreement like Canada. The UK has rejected this "stark and binary choice" between two existing models, calling for a bespoke free trade agreement. The Prime Minister rejected the Norway model on the grounds that becoming a rule taker with no formal vote would be politically unsaleable".

[32] Iuliana–Mădălina Larion, "A brief analysis on Brexit's consequences on the CJEU's jurisdiction" in The International Conference – CKS 2017 – Challenges of the Knowledge Society (Bucharest, 12th - 13th May 2017, 11 th Edition, "Nicolae Titulescu" University Publishing House, Bucarest): 480:"In the future, the UK might come again under the CJEU's jurisdiction, at least for some types of actions, like a direct action based on contractual liability47, if it concludes a contract or an international agreement with the EU, as any other third country can. For example, if the UK becomes a member of the European Free Trade Association (EFTA), the Agreement on the European Economic Area already authorises courts and tribunals of the EFTA Member States to refer questions to the Court of Justice on the interpretation of an agreement rule" .

[33] https://ec.europa.eu/commission/news/ambitious-partnership-uk-after-brexit-2018-aug-02_en accessed March 17, 2019.

[34] https://www.gov.uk/guidance/customs-procedures-if-the-uk-leaves-the-eu-without-a-deal accessed March 17, 2019.

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