

## **Outline professor Giandonato Caggiano**

In matters of culture and education, the EU has only competence to support, coordinate or supplement actions of the member states (see Article 6 TFEU, as for industry, healthcare, and tourism). Any act of harmonisation of legal and regulatory provisions of the member states is excluded. The only Measures (to be taken by ordinary legislative procedure with unanimity in Council) are to be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the areas (see for instance Decision of the European Parliament and of the Council on a European Year of Cultural Heritage -2018).

On this ground, the UK withdrawal from the EU will request less legislative change to be done than in other matters of exclusive (customs union, competition and some common policies) or shared (social policy, agriculture, consumer protection, transport and the environment) competences where, by contrast, the EU has legislative power.

Still a number of questions will remain unanswered until the outcome of UK-EU negotiations is not known. In the first place, the question of UK participation to EU programs in culture and education; in the second place, the impact of EU provisions which do not primarily pertain to these two policies but are affected by the cultural and education activities (return of cultural objects unlawfully removed from the territory of a Member State, media law harmonization, State aid in culture, the working conditions in cultural and creative industries, the cultural dimensions of the EU's external actions, the recognition of higher-education diplomas, freedom of establishment of educational institutes, movement of students and teacher, etc).

In the enlargement process, the two sectors of culture and education represent a whole package to be evaluated for a candidate state (see for instance chapter 26 of negotiations UE/Serbia and EU/Turkey).

So it is important to introduce the general Brexit legal questions.

The EU law consists of 21,000 regulations and directives, 1,100 international agreements, the ECJ Judgments, soft law instruments. The EU directives are implemented into national law and it is not easy to say how many need to be changed. EU regulations, which are directly applicable, will lose their effects. The most relevant act to be repealed is the European Communities Act 1972 (ECA), which recognises the supremacy of EU law (precedence to EU law over inconsistent UK legislation). International treaties, in the field of the EU's exclusive competence, will cease to apply in the UK and, case by case, will be decided to be renegotiated (or not) with the UK as a new contracting party. For mixed agreements, special negotiations will have to be made between the EU, the UK and the other contracting

states. In respect of laws on freedom, security and justice, UK has already used opt-outs clauses, but still there are many legal acts to be reconsidered.

There will be a negotiation process to redefine the terms of the UK future relationship with European Union. Under the Article 50 TFEU process, the Brexit is expected to last almost two years. This process raises a considerable degree of questions and uncertainty.

The extent of the withdrawal agreement is also unclear. European Commission and UK government disagree on the position whether or not the withdrawal agreement will be limited to extricate UK from EU. In any case, there will not be enough time (within the two years stipulated). The possible agreement(s) on the future relationship could be integrated in the same or separate text concluded at the same time or in a moment after the withdrawal agreement. I believe a separate agreement (or agreements) should be negotiated for future cooperation unless in case of a 'hard Brexit'. Article 50 TEU provides the basis for the withdrawal agreement but future-relationship agreement would require an *ad hoc* legal basis with a third country, like UK will become soon (such as Article 207 TFEU- common commercial policy- or 217 TFEU- association agreements). Those possible agreements will require approval by the EP and the Council and ratification by all remaining Member States. The withdrawal agreement and the future relationship agreement(s) with EU law, as an international agreement of the EU (in particular the Council decision to conclude the agreements) is subject to CJEU judicial review (action for annulment *ex* Article 263 TFEU; preliminary ruling *ex* Article 267 TFEU). The European Parliament could submit the request under Article 218(11) TFEU but not regarding the withdrawal agreement (Article 50 TEU refers only to Article 218(3) TFEU)

The UK's future relationship with the EU post Brexit could follow one of the existing models (between EU and non-EU countries). The 'Norway Option', joining EFTA and the EEA, participating in the Single Market (apart from in the Common Agricultural Policy and the Common Fisheries Policy), in the four freedoms, including the free movement of people; the 'Swiss Option' not joining the EEA, but negotiating a number of bilateral agreements with the EU in order to gain some access to the Single Market, to the freedom of goods and people but not to services and capital; the 'Turkish Option' for a customs union; the 'Canadian Option' for a Free Trade Agreement (FTA); the WTO Option whose benefits of trading apply mainly to goods. Failing successful negotiations, the White Paper states that 'no deal for the UK is better than a bad deal for the UK'.

So I will limit myself in this presentation to the Turkish Option

Because of the UK difficulty to accept EU workers mobility (intra-EU migration), single market options seems to be unlikely. The UK will prefer a comprehensive and ambitious free-trade agreement (FTA) with the EU which would give the UK wide access to the EU's single market, as well as negotiating a new customs agreement.

The EU customs union with Turkey established by the EU-Turkey Association

Council Decision 1/95 covers industrial goods and will be modernised (the Commission asked on 21 December 2016 the Council for a mandate to negotiate a new the agreement).

Freedom of movement for workers between the Union and Turkey is to be secured by progressive stages on the basis of Article 12 of the Ankara Agreement establishing an association between the EEC and Turkey (OJ 217, 29.12.1964, p. 3687/64) and Article 36 of the Additional Protocol (OJ L293, 29.12.1972, p.3). Any discrimination on grounds of nationality is prohibited (Article 9 of the Agreement). In relation to workers Article 13 of Association Council' Decision 1/80 (OJ C110, 25.4.1983, p.60) provides the following *Standstill clause*: 'The Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories.'

The CJEU ruled that the EEC-Turkey Association and EU law concerning citizenship differ substantially, so that protection against expulsion enjoyed by Union citizens cannot be applied. In the 2011 *Dereci case* (the question was whether a Turkish family member of a EU citizen could derive a right to reside from the EEC-Turkey Association Regime where his status as family member of EU citizen did not help him) the Court made clear that the famous 'standstill clauses' of the association regime prohibit the tightening of rules.

A standstill clause could be considered as a model of acquired rights for British nationals resident in European Union and EU nationals in UK. For the future, the migration could be stopped as the Court has held that the objective of preventing unlawful entry and residence constitutes an overriding reason in the public interest for the purposes of Article 13 of Decision No 1/80 (see, judgments 7 November 2013, *Demir*, C-225/12; 29 March 2017, *Furkan Tekdemir*, C-652/15).

The biggest sources of academic and cultural interchange include transnational exchange programmes such as Erasmus Plus, Horizon 2020 and the Marie Curie scholarship. British students and professors could continue to be included as other non-EU countries.

For EU Research Programs like Horizon 2020, researchers have expressed concern because they do not know what Brexit agreements will apply in the near future. Horizon has provided an estimated £2 billion worth of EU funds to British universities.

EU programmes such as Erasmus Plus may be affected by a UK withdrawal from the EU, but this may be dependent on the outcome of negotiations, as there are non-EU states which are involved in Erasmus Plus. In the *Creative Europe Programme*. The Article 8 of the Regulation No 1295/2013 on Eligibility of organisations from non-EU countries stipulates that countries other than EU Member States may participate in the Programme. This participation is subject to the conditions referred to in the same article. Third Countries that already fully participate in the Programme are Iceland, Norway, Albania, Bosnia and Herzegovina, Former Yugoslav Republic of

Macedonia, Montenegro, Republic of Serbia.

Cooperation with the UK will continue as before: in the Bologna Process (the European Higher Education Area), within the OECD (PISA, TALIS, etc.), the IEA-International Association for the Evaluation of Educational Achievement (TIMSS-Trends in International Mathematics and Science Study and PIRLS-Progress in International Reading Literacy Study).

After the Brexit, EU students (5.5 percent of the total UK student population) may be charged tuition fees at more expensive rates as international students. A number of British universities may consider the possibility of establishing satellite campuses in other European cities overseas.

Last but not least, the British will continue to profit greatly from the advantage that English has become effective EU's *lingua franca*.