On 25 March 2017 the European Union celebrates the 60th anniversary of the Treaty of Rome. With Brexit around the corner and the EU searching for its future strategy, we talk to EU law Professor Federico Fabbrini on the legal challenges ahead.

The decision by the United Kingdom to withdraw from the European Union is unprecedented and has created a whole set of political and legal questions. We interviewed Federico Fabbrini, Professor of European Law at the School of Law & Government of Dublin City University and author of the 2016 book “Economic Governance in Europe”.

Looking ahead at the Brexit negotiations what are, in your view, the three most important legal uncertainties concerning the Article 50 process and how can they be addressed?

A first question has been whether the UK government could trigger Article 50 TEU on its own and start the process of withdrawal without the involvement of the UK Parliament. In January 2017, the UK Supreme Court resolved this question in the Miller case, ruling that the June 2016 referendum did not automatically empower the UK government to start the withdrawal process without authorization from the UK Parliament. As a result, the UK government submitted a withdrawal bill to Parliament. The bill easily passed in the House of Commons, and despite the House of Lords’ willingness to propose amendments, it was eventually approved in its initial version by the House of Commons on 13 March 2017. This will allow the UK government to invoke Article 50 TEU and commence the withdrawal process before the end of March 2017.

A second question regards how the withdrawal negotiations unfold. According to Article 50 TEU, these should both handle the untangling of a departing member state from the EU legal order and define the new relationship between that country and the EU post-withdrawal. Article 50 TEU sets a two-year timeframe to agree on the terms of both the divorce and the new relationship, after which the exiting member state is simply out of the EU – the so-called cliff-edge. The European Council can extend the deadline, but this requires unanimous consent by the remaining 27 member states. Negotiations on liabilities are going to be contentious, and the EU has never concluded a comprehensive trade pact in just two years. So it is highly uncertain if the UK
and the EU can manage to agree on a complete withdrawal deal and define the new relationship after the divorce within the given timeframe.

A third question arises, finally. Even if the UK and the EU are able to conclude a withdrawal agreement which covers both past and future relations, several uncertainties surround the process of ratification of this accord. On the basis of the EU Treaties, the European Parliament must ratify the agreement and the UK government has committed to submit the deal to an "up-or-down" vote before the UK Parliament. If either of these parliaments vetoes the agreement, the UK government and the EU institutions may be forced back to the drawing board, or leave with no deal.

A multi-speed Europe, where some countries move ahead with new common projects while others stay behind, seems to be gaining support among some EU member states. If this becomes the EU's official strategy, what will this mean for the common legal order?

Multi-speed Europe is based on the idea that all member states proceed in the same direction, toward "ever closer union", albeit at different speeds. The reality is that member states are not moving in the same direction: The UK has decided to secede, the possibility that Greece may leave the Eurozone has clouded responses to the euro-crisis, and several countries of Central and Eastern Europe are blatantly flouting core EU principles such as respect for democracy, the rule of law and the protection of human rights, including those of migrants entering the EU. EU member states, in other words, do not share the same vision on the future destination of the European integration project.

Following Brexit what is needed is a new constitutional framework that re-connects the EU member states which want to move toward political Union with those which only want to be part of a common market.

Federico Fabbrini, Professor of European Law at the School of Law & Government of Dublin City University

In February 2016, to prevent UK withdrawal, the European Council agreed upon a special settlement for the UK within the EU. That international agreement acknowledged the reality of a multi-directional Europe, by exempting the UK from participating in "ever closer union". Yet, the deal was UK-specific, and following the decision of the British voters to leave the EU, it has lost any legal value. However, the EU should address more forcefully the perils of disintegration, and re-think the ways of staying together.
Read the full interview here:

PUBLICATION

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