

***PENSIONS SYSTEMS IN THE EUROPEAN UNION AFTER BREXIT:
ITS IMPACT ON PUBLIC PENSIONS***

***EL SISTEMA DE PENSIONES EN LA UNIÓN EUROPEA DESPUÉS
DEL BREXIT: SU IMPACTO EN LAS PENSIONES PÚBLICAS***

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Artículo recibido el 21 de mayo de 2018

Artículo aceptado el 8 de junio de 2018

RESUMEN

En este artículo se analiza el impacto del Brexit en la cobertura de pensiones, en la coordinación entre los diferentes estados miembros de sus sistemas de seguridad social, y en el principio de libertad de circulación de trabajadores. El Brexit va a afectar a los anteriores elementos, sobre todo si se tienen en cuenta las diferencias del modelo de pensiones existente en el Reino Unido con el sistema español. El artículo termina ofreciendo diferentes opciones regulatorias para abordar esta cuestión, como el establecimiento de un marco jurídico para la exportación de pensiones o la negociación de un convenio a medida entre el Reino Unido y España.

PALABRAS CLAVE: Brexit, pensiones de jubilación, Seguridad Social, libertad de circulación de trabajadores en la Unión Europea, extranjeros no comunitarios.

ABSTRACT

This article analyzes the impact of Brexit on retirement benefits, on the coordination between the different member states of its social security systems, and on the principle of free movement of workers. The Brexit will affect the previous elements, especially if the differences of the existing pension model in the United Kingdom with the Spanish system are taken into account. The article ends by offering different regulatory options to address this issue, such as the establishment of a legal framework for the export of pensions or the negotiation of a custom-made agreement between the United Kingdom and Spain.

KEY WORDS: Brexit, retirement benefits, Social Security, free movement of workers in the European Union, non-EU foreigners.

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1.- INTRODUCTION

After the affirmative vote on June 23, 2016 of 52 percent of Britons in the referendum in favor of Brexit, numerous unknowns were opened about the future of social protection for European and UK workers. This uncertainty affects past, present and future European workers in the UK and British in Europe, and covers many practical aspects such as pension collection, healthcare, or labor regulations.

One of the biggest uncertainties that opens the decision of the United Kingdom to leave the European Union is the pension coverage. The uncertainty may affect the vested rights, or in course of acquisition, of the Spanish pensioners and their beneficiary relatives, who reside or are temporarily in the United Kingdom, as well as the British pensioners and their beneficiary relatives who reside or are located temporarily in Spain.

The free movement of workers is one of the main principles in the construction of the European Union. The coordination of the pension system within the European Union, together with the coordination of other elements such as healthcare or labor regulations, are key elements of this freedom of movement of workers within the borders of the European Union. For this reason, Brexit may endanger the present and future mobility of British workers and pensioners in Spain and Spanish in the United Kingdom.

Currently, workers in the common space can add years worked in different States to qualify for benefits in a country with a minimum of time worked. These benefits include, among others, pensions for retirement, survival, disability, sickness, maternity and paternity, and unemployment. The UK's departure from the EU will jeopardize Social Security agreements in the field of pensions, making it likely that three million EU citizens living in the UK and 1.3 million Britons who live or work in the rest of the EU, see their rights to pension benefits affected. According to the latest data (1/1/2018) from the Spanish National Institute of Statistics, 127,920 people of Spanish nationality reside in British territory in the process of Brexit. A figure that stands as the historical record of population of Spanish nationality in the United Kingdom and that means double that eight years ago (57,770 in 2009). In addition, the actual number of Spaniards in the United Kingdom is much higher, since according to data from the Ministry of Foreign Affairs and Cooperation, another 90,000 Spaniards reside in the United Kingdom and are not registered. The future of pension coverage for these Spanish residents in the United Kingdom and their beneficiary relatives is one of the uncertainties to be cleared in the Brexit negotiations.

This article analyzes the impact that Brexit can have on social retirement benefits, within the principle of freedom of movement for workers in the European Union. The Brexit may affect the recognition and collection of social security benefits, which could mean the non-recognition of contributions and the total payment of benefits, in an environment where the sustainability of the majority of public retirement systems in Europe.

The following sections of this article analyze the impact that Brexit can have on the social security benefits of European citizens, with special interest in the Spanish case, as it affects the recognition and collection of social security benefits. In the first place, in section 2, the principle of free movement of workers is analyzed, which in the field of

pensions has been developed through the coordination of their social security systems of the different member states. Section 3 studies how Brexit will affect the previous coordination. Section 4 explains the existing pension model in the United Kingdom and its differences with the Spanish system, and then evaluate the effects of Brexit in this coordinated pension model in section 5. Finally, Section 6 compares the different regulatory options that exist or could be implemented to maintain the coordination of the social security system between the United Kingdom and the European Union. The article is closed with a series of final conclusions.

2.- THE FREE MOVEMENT OF WORKERS AND THE COORDINATION OF THE SOCIAL SECURITY SYSTEMS IN EUROPE

The legislation developed in the European Union to improve the situation of workers derives from one of the fundamental rights of the citizens of the European Union, the free movement of workers. This community freedom belongs to the 4 general freedoms introduced by the Common Market in 1992 (freedom of movement of goods, services, workers and capital), and implies "the abolition of any discrimination on grounds of nationality among workers of the Member States, with respect to employment, remuneration and other working conditions"¹. In particular, and without prejudice to certain limitations of public order, safety and public health, the free movement of persons implies, on the one hand, the right of workers of the Member States to move freely to respond to job offers or to reside to exercise a job in the territory of a different Member State and, on the other hand, to remain in the territory of a Member State after having exercised a job there (SAIZ & NAVARRO 2016).

Based on this general principle of freedom of movement for workers, Community legislation has developed a broad set of rules and legislative coordination in order to make that freedom effective. The aspects affected by this legislation are numerous, since they include the worker's own hiring process (freedom of movement and residence, labor legislation, recognition of professional qualifications and academic qualifications) up to the consequences subsequent to that hiring (no salary discrimination, rights of collection of pensions and health care). In this last element there has been a process of coordination of the legislations of the different States in the matter of Social Security. This coordination has allowed, without there being a single Social Security system and respecting the autonomy and independence of each national system, the export of social benefits. In this way, when a benefit is caused by a worker or pensioner (or their family members) in an EU Member State in accordance with their domestic legislation, such benefit may be received in another Member State in which that citizen has established the residence.

¹ Article 45 of the Treaty on the Functioning of the European Union.

To achieve these social policy objectives, and taking into account the diversity of national practices, two types of community rules have been developed to regulate aspects of Social Security in the European Union: (i) the Community Directives, which require the States to modify progressively their legislation or practices, to incorporate the contents of the Directive within the established term, leaving to the States the form and the procedure to carry out that incorporation; and (ii) the Regulations for the coordination of Social Security systems, which are measures of direct application in all the Member States of the European Union, without requiring their publication in the Official Gazette of each of the Member States. This last legislative technique, present since the beginning of the European Union (there are precedents even in 1958 Regulations of the European Coal and Steel Community, precedent of the European Economic Community), has its most recent development in Regulation 883/04, on coordination of the Social Security systems, which entered into force on May 1, 2010, the date on which Regulation 987/2009 that develops it also entered into force². The objective of these coordination rules is to facilitate the free movement of workers to go to the place of the European Union where their services are demanded, and to guarantee the social protection of their Social Security rights (BARCELÓ 2017).

However, despite the existence of these regulations, the legislative technique most used has been the approval of Community Directives, whose main purpose is the harmonization and not the creation of a regulation susceptible of direct application. For this reason, European social law has not entailed the creation of a single labor law or the supplanting of national systems, but a system of legislative coordination.

3.- THE EFFECTS OF BREXIT ON THE LEGISLATIVE ADVANCES IN MATTERS OF SOCIAL SECURITY IN THE EUROPEAN UNION

The Brexit will affect the previous legislative advances in the matter of Social Security. In fact, one of the arguments used by those who supported Brexit in the 2016 plebiscite was that the United Kingdom should leave the European Union to limit the free movement of people and their obtaining residence permits, and to prevent situations of abuse in access to social benefits. One of the elements on which the British government bases its Brexit strategy is to regain control of the borders, which would mean limiting the entry of European workers, who would need to demand a visa. According to the British government, Britain's net immigration amounted to 333,000 in 2015, the second highest recorded figure and more than three times David Cameron's promise of 2010 to bring the figure to tens of thousands. One of the arguments of the Brexit advocates is that the net immigration of the EU countries, in particular of the member states of Central and Eastern Europe, increased rapidly after the accession of these eastern

² The Regulation (EU) 1231/2010 of the European Parliament and of the Council of 24 November, 24th, 2010, extended the application of these Regulations to third-country nationals, except Denmark and the United Kingdom. On these Regulations, see COLSA *et al.* 2010).

countries to the EU in 2004 and, more recently, when the citizens of Poland, Bulgaria and Romania acquired the right to work and settle in the United Kingdom. One of the objectives pursued by the United Kingdom when leaving the EU is to reduce the number of migrants from the EU, estimated at 3.15 million, compared to the 900,000 British expatriates living in different European countries. For example, Poles are the largest group of EU citizens living in the United Kingdom, with estimates that exceed 853,000 people. Some of them, those who have been in the United Kingdom for five or more years, would be eligible to apply for permanent residency (GARCÍA DE CORTÁZAR 2017).

However, in the face of these arguments that support the limitation of the freedom of movement of European workers and immigrants in general, several studies within the United Kingdom itself argue that immigrants from the EU have a positive economic impact in the United Kingdom. Compared to the native population, these immigrants are younger, more educated, more likely to be employed, contribute more to the public finances of the United Kingdom than native citizens, and are less likely to apply for social assistance and tax exemptions (DHINGRA, OTTAVIANO, VAN REENEN & WADSWORTH 2016; DUSTMAN & FRATTINI 2014).

Therefore, the role of free movement of workers and social benefits of community workers in the United Kingdom will be one of the most prominent elements in the negotiation for the exit of the United Kingdom from the European Union. The uncertainty about this negotiation is maximum, since it is the first time that a member state decides to exercise its right of separation. According to the third paragraph of Article 50 of the Treaty on European Union, Community legislation will cease to apply in the United Kingdom from the date of entry into force of the withdrawal agreement or, failing that, after two years of notification of its withdrawal decision, "except if the European Council, in agreement with that State, decides unanimously to extend that term"³. Therefore, the withdrawal does not have to take place immediately, since the United Kingdom has two years to leave the EU from March 29, 2017, the date on which it invoked Article 50 of the Treaty on European Union initiating the formal process of negotiations for the exit of the EU, and even that date can be extended. We are now in the process of negotiating the terms of the UK EU decoupling, including pension and health coverage, both from permanent or temporary European residents in the United Kingdom and from permanent or temporary British residents in the EU.

But the greatest uncertainty lies in the negotiation itself, since the final result is not clear, which requires posing the possible scenarios in which this negotiation will end. There are two extreme scenarios: the first one is the total rupture between both parties or "Cliff Edge", while the second scenario would keep the situation practically the same

³ Section 3 of the Article 50 of the Treaty on European Union (Consolidated version, published in the Official Journal of the EU OJEU, on March 30, 2010).

as it is now, which in the case of Social Security would imply the maintenance of Regulation 883/04. However, it should be noted that in case of total rupture, reciprocity will not be absolute between the United Kingdom and the EU, since British citizens have guarantees in the EU that do not have to be extended to European citizens in the United Kingdom. Specifically, Britons who had already worked in the EU would be protected by Regulation 883/04 (for the extension that Regulation 1231/2010 made of Regulations 883/04 and 987/2009 to third-country nationals), the new ones British workers in the EU could benefit from generous Social Security rights for third-country nationals who are already regulated by several emigration Directives, and finally, British citizens would always be covered by EU law to seek protection from the Court of Justice of Luxembourg. On the other hand, European citizens in the United Kingdom would not enjoy so many advantages, as they would depend on British standards that would be beyond the control of the European Union (GARCÍA DE CORTÁZAR 2017).

Starting with the scenario of total rupture or “Cliff Edge”, if we stick strictly to what is foreseen in the EU Treaty, at the moment in which the United Kingdom ceases to be a member of the Union, it would cease to be of free application movement of workers between the United Kingdom and the rest of the EU. With the “Cliff Edge”, Spanish workers or expatriates in the United Kingdom will not enjoy the same rights as native workers, and British citizens will not be able to benefit from the rights inherent to this status of privileged foreigners in our country. In turn, the Member States and the United Kingdom would recover their competences in matters of aliens, which would entail the need to obtain the corresponding authorizations to be able to reside and work legally. Recall that Article 21 of the Treaty on the Functioning of the European Union specifies in Directive 2004/38 (Article 16) that citizens of the European Union can acquire the right of residence in another EU country if they reside legally during a continuous period of five years. This earlier would be in suspension. For example, workers from the United Kingdom who travel to Spain to work must obtain the corresponding work permits in accordance with Organic Law 4/2000 of January 11, on the Rights and Freedoms of Foreigners in Spain and their Social Integration or, in exceptional cases assessed, under Law 14/2013, of September 27, to support entrepreneurs and their internationalization. On the other hand, EU immigrants in the United Kingdom would become "irregular" and would have to apply for the "Tier 2 Visa", a system similar to the Australian one that applies to immigrants from outside the EU. The Tier 2 system takes into account, among other factors, the salary and the knowledge of English.

To this is added the fact that the EU regulations on the coordination of Social Security systems would not be applicable either, as has already been mentioned previously. For example, one of the uncertainties raised by the withdrawal of the United Kingdom from the European Union is that it would no longer apply Directive 96/71/EC of the European Parliament and the Council of December 16, 1996, which guarantees displaced workers by companies for a limited period minimum working conditions in accordance with the standards of the Member State of destination. There would

certainly be alternative intermediate formulas that would allow EU expats to continue to enjoy the benefits derived from the freedom of movement of workers: for example, that the United Kingdom should adhere to the European Free Trade Agreement (EFTA), but without the need to integrate in the European Economic Area (EEA), either to sign bilateral agreements such as the model that Switzerland has with the European Union, or even to sign bilateral agreements with each of the Member States, including Spain.

In addition, we must see the treatment given to British tourists, a key issue for Spain since the United Kingdom is its main issuer of travelers, so it is one of the most important uncertainties to clear in the negotiations that must take place, since it will be necessary to rethink the social benefits of these groups. Therefore, with barely two years to negotiate the exit agreement from the United Kingdom, the high complexity of the process and the high degree of politicization to which it will be subjected, draw a panorama of maximum uncertainty.

The scenarios may be different depending on how the negotiations with Brussels are developed. A few months ago, the central scenario, in the opinion of many observers, was to reach an agreement in 2019, which would be followed by a period of transition of several years during which there would be a progressive adjustment to the new conditions created after the departure from United Kingdom. To do this, it would be necessary to review the immigration status of all those pensioners or workers who are providing their services or who reside in another Member State, compiling the documentation evidencing their stay, residence or current job. Until the effective exit of the United Kingdom from the EU takes place, the status quo of relations between the United Kingdom and the rest of the Member States is likely to remain unchanged. In addition, it is foreseeable that a temporary special regime will be agreed upon for EU workers who were already serving in the United Kingdom at the time of their withdrawal and vice versa. In this regard, nationals of the Union will be able to continue enjoying the right to move freely to the United Kingdom to work and reside in their territory and vice versa.

4.- THE PENSION SYSTEM IN THE UNITED KINGDOM

The British public pension model differs substantially from the distribution system of the Spanish tax model⁴. The main difference is that the British system combines a public sphere (a pay-as-you-go system) with a private sphere of action (capitalization system). The system has been recently reformed, with the Pension Act of 2014, which entered into force on April 6, 2016, although it maintains a scheme similar to the one that had previously existed. Before 2016 there were two main types of public pensions,

⁴ For a detailed analysis of the pension system in the United Kingdom, see CAMÓS, GARCÍA DE CORTÁZAR & SUÁREZ 2017, Chapter V.

the “State Basic Pension” or “State Retirement Pension”, that has a similar amount for all those who had paid into National Insurance or had unemployment contributions, and an “Additional State Pension” or “State Second Pension”, of a contributory nature, whose amount depends on the income to the National Insurance. The new system since 2016 simplifies the previous scheme by unifying both pensions in the “State Pension”, maintaining a similar scheme, although with some modifications. These changes are in line with those made in other countries such as Spain: increase in the minimum age of retirement in the coming years (up to 67 in 2027, and which can continue to rise depending on the evolution of life expectancy), increase in the minimum contribution periods, and incentives to prolong the working life. Thus, the Basic Pension currently has a fixed amount of 155.65 pounds per week (about 200 euros), to access it you must have paid a minimum of 10 years, and that amount is charged if 35 years of contribution are credited, if no, it charges less. The Complementary Pension is linked to income and is calculated based on the average salary of the taxpayer's entire professional life, updating the salaries of the initial years based on economic growth rates. Once the pension is calculated, it is updated according to the consumer price index.

In addition, for people with lower incomes who do not meet the conditions to access the previous public pensions, there is a non-contributory pension called “Pension Credit”. It is a welfare pension, exempt from taxes, for people with greater risk of exclusion. It is based on insufficient income, and also requires residence in the United Kingdom and to have reached the retirement age. Its objective is for the beneficiary to reach the minimum amount established in the Basic Pension of 155.60 pounds per week (237.55 if it is a couple). This objective tries to cover a minimum income in those people who have reached the age of retirement and cannot reach that minimum amount with their own resources or other types of pensions.

The weight of the private alternative is another of the main differences with the Spanish system. Thus, public pensions are combined with complementary pensions of a private nature (“contracting out”). Even beneficiaries can opt for the alternative of a private pension and reduce their contribution to the public system, although logically they will receive a lower public pension. Private pension plans are of two types, the collective plans promoted by companies, and personal or individual plans.

Within the collective plans, there are two types. One is the defined contribution plans, whose benefits are based on the contributions made and the returns on the investments of the plan. The others are the defined benefit plans, where the final pension is based on the salary and the years worked in the company. The company or employer is the promoter of these plans, to which their workers must subscribe by means of the deduction of certain amounts of their salaries. In recent years, and especially after the last reform of 2016, these plans have ceased to be voluntary and have become mandatory. All workers who work in the United Kingdom, who earn more than 10,000 pounds per year, and who are between the age of 22 and the legal retirement age, must

subscribe to these business plans. The characteristics of these plans are very varied, depending on what the company establishes, although its basic aspects are regulated by the government, being more flexible than public pension plans. Thus, for example, access to benefits is allowed before retirement (although it is usually prohibited before age 55, except for some situation that has occurred as a serious illness), and you can choose to enjoy the pension as a periodic income or as a payment unique at the time of retirement.

Finally, personal pension plans are similar to business plans, except that the figure of the entrepreneur as promoter disappears. They are designed for the self-employed and any individual, although companies can also facilitate their participation in these plans. Evidently, only can have the modality of defined contribution, and they lack the obligatory character of the plans of companies. To promote these plans, the government establishes several tax advantages, which also apply to business plans. Thus, 25% of the benefits received are exempt from taxation, and also enjoy a tax deduction, although its limit has been reduced since it is not necessary that this incentive was very high before the mandatory nature of collective pension plans.

A global analysis of the British pension system shows that it is different from Spain in terms of the financial sustainability of the system and its social side. The British pension system is quite sustainable, and it is not expected to put excessive pressure on the public accounts of the United Kingdom. In 2013, public spending on pensions in the United Kingdom was 7.7% of GDP, compared to 11.3% on average in the EU, and this percentage is expected to be maintained in the future. One of the causes of this situation is the population structure in the United Kingdom compared to the rest of the EU, with a relatively high fertility rate, higher activity and occupation rates, a greater delay in the age of departure of the labor market, and curiously a high arrival of immigrants that increase the young and working population clearly contributing to Social Security (CAMÓS, GARCÍA DE CORTÁZAR & SUÁREZ 2017, pages 101-102). Along with the above, the scheme of the British pension system helps to reduce its cost. The great weight of private pensions takes away pressure from the public part, which has become a minimum pension system aimed at avoiding situations of poverty in old age. Precisely this connects with the second element of British pensions, their lower social generosity. The United Kingdom has the lowest average substitution rate in the EU, 36.4%, compared to the EU average of 44% and the high Spanish rate of 75% -80%, which means that the public pension covers approximately only one third of the last salary of the active stage of an individual in the United Kingdom. The recent obligation to compulsorily adhere to a private pension plan is intended to improve this situation, while keeping the financial sustainability of the system under control. Although the danger of this system lies in the inequality it provides, with the risk that pension yields are based on the investments made by each plan, which can be reduced, especially if a new economic and financial crisis like the one that arises in 2008.

5.- THE IMPACT OF BREXIT IN THE EUROPEAN COORDINATION MODEL OF PUBLIC PENSIONS

The Community Regulations for the coordination of Social Security systems allow that all periods of contribution or insurance accredited be considered as carried out in the respective Social Security system, and therefore compute to access and calculate the amount of the pension. For this reason, all Social Security systems of the EU countries must include the following basic principles of coordination. First, the contribution of a non-national must be made in the country where that worker provides their activity, and that contribution from the host country must have the same rights and obligations as domestic workers. Secondly, the Community regulations on “totalization of contribution periods” in the different countries are applied, that is, each Social Security system must consider all the periods of contribution or insurance as their own, in order to access the pension, and must proceed to calculate in this way the amount of the benefit in question (theoretical pension or accumulation of periods); once the theoretical pension has been calculated, the “pro rata” payment is applied to the amount, where each country participates in the payment of the pension in the same proportion to the years quoted in its system, although the beneficiary will receive a single pension. Finally, the benefits may be exported to any member country in which the beneficiary decides to reside, following the above principles. However, each country retains its own requirements and rules, and although it is mandatory to accumulate the contribution periods carried out in other countries, the requirements of the country in which the beneficiary decides to apply for the pension must be met (retirement age, minimum period, amount contributed) (LOPEZ CUMBRE 2016, pages 1-3).

For example, a Spaniard credits 25 years of contributions in Spain, 10 years of contributions in the United Kingdom and 5 years of contributions in Germany. This means that this worker have been insured for a total of 40 years before reaching retirement age. Each country in which this person has been insured for at least 1 year will have to pay a pension when the person concerned reaches retirement. With the 25 years quoted in Spain, the Spanish pension (pension A) is accessed. In turn, a pension would be calculated, in accordance with Spanish legislation, totaling all the periods (those accredited in Spain, in the United Kingdom and in Germany, 40 years) (pension B). The amount of pension B is applied to $(25/40) = 62.5\%$, which is the percentage of years contributed in Spain, giving rise to the "pro-rata" pension or C pension. The Social Security Institute would compare the amounts of pensions A and C and would grant the person concerned the pension of the highest amount.

With Brexit, the reciprocal recognition of contributions and the total payment of the benefits with the possibility of exporting them will no longer be insured, so the British workers displaced or expatriated in the EU and the community displaced to the United Kingdom could be very disadvantaged. Until a global agreement with the EU or a

bilateral agreement between Spain and the United Kingdom is reached, the Community regulations on the coordination of Social Security systems would no longer be applicable. In particular, they would no longer be subject to the effects of Regulation (EC) 883/2004 and of Implementing Regulation 883/2004. In this way, different benefits would end, such as the maintenance of contributions in the country of origin, the totalization of periods of insurance in different countries of the EU for the recognition of Social Security benefits by the EU Member States, or the export of benefits.

Thus, the “State Pension” or British public pension is indexed annually. Therefore, a British pensioner who retires in another Member State has the right to have his pension revaluated according to the greater of the following three variables (triple locking): inflation, wage growth, or 2.5%. However, in a post-Brexit situation, one of the first issues that could occur is that British pensioners residing in a Member State would be treated as if they belonged to a non-EU country, for example, Canada, and their pensions would be frozen. Therefore, the pensions of the British pensioners would lose purchasing power, unless some kind of bilateral agreement was signed. At this time, the United Kingdom only has this type of pension indexation agreements with very few countries⁵. In addition, a British who works in Spain, could stop receiving certain non-contributory benefits, because in Spain certain requirements are required, such as residence. Finally, it has been argued that British expatriates living in the EU at the time of Brexit would have "acquired rights" under the Vienna Convention of 1969 on the right of the treaties⁶. However, this Convention does not appear to be a viable solution for the right of residence, and even if this right were recognized, the rights acquired would not extend beyond the rights of residence and property, and rights to benefits social security, pensions and Social Security would be excluded.

The same would apply to Spaniards (or other EU citizens) who had worked in the United Kingdom and decided to retire there. However, the lower weight of British public pensions, which are basically limited to establishing a minimum pension for the poorest retirees, and the greater weight of private pensions, which are more easily transferable if the beneficiary retires in another country, makes that the cost of eliminating the coordination of public pensions in the EU is greater among the British than among the rest of EU citizens.

6.- JURIDICAL FRAMES TO IMPLEMENT SOCIAL BENEFITS IN THE UNITED KINGDOM

⁵ Barbados, Bermuda, Bosnia, Jersey, Guernsey, The Isle of Man, Israel, Jamaica, Kosovo, Macedonia, Mauritania, Montenegro, the Philippines, Serbia, Turkey and the USA.

⁶ This UN convention establishes that standards must be respected in relation to international treaties, and Article 70 establishes that, unless otherwise agreed, if a treaty is terminated or changed, this will not affect any right or obligation of the derivative parties of the Treaty before its termination.

This section reviews the possible legal frameworks that could be applied when the UK leaves the EU, and its relationship with pensions. According to an analysis of the “Center for European Reform”, there are seven different possibilities of articulation of the future relationship between the EU and the United Kingdom (PIRIS 2016). These would go from the less intense relationship, consisting in that the United Kingdom would be a third country that should simply comply with the trade rules established by the World Trade Organization, until the negotiation of a special bilateral agreement between the United Kingdom and the European Union, or between the United Kingdom and each of the member countries. The less intense relationship options would be limited to the commercial aspects, and it would be difficult for them to move forward with an agreement on pensions and health coverage. Among these options would be the following. The simplest is to become a third country that follows the rules of the World Trade Organization. This would not imply any form of negotiation with the EU, and would reflect the harshest and most extreme Brexit. The special relations, not only commercial, but economic and of all kinds that the United Kingdom has had with the EU in recent decades, show that some kind of negotiation and agreement will be reached, beyond this extreme option.

One of these options would be to establish a Customs Union, as there is now between the EU and Turkey. This would give the United Kingdom very limited access to the European internal market, taking away any kind of sovereignty in its economic policy. In addition, the Customs Union is a previous step to be able to become integrated and be a member of the EU, as has happened with many countries now members. Therefore, this option is very unlikely, since it would be strange for the UK to leave the EU just to start the arduous journey towards a new integration. Another option, in this case followed by countries that do not intend to join the EU, is the establishment of a Free Trade Agreement. Recently, two of these agreements have been concluded (with Canada and Singapore), although their ratification is still needed. And currently another is negotiated with the United States, the Transatlantic Trade and Investment Partnership (TTIP), whose negotiations are very controversial. Given the economic size of the United Kingdom, an agreement of this kind could be a very interesting option for the EU, in a framework of hard Brexit with no possibility of reaching more intense agreements. These free trade agreements are usually limited to the trade of goods, not services, which harms a United Kingdom with a large service sector, specifically the financial sector, which would be very difficult to integrate into an agreement of this type. In addition, these agreements hardly fall into the harmonization of regulations, so it would also be difficult to advance in the aspects related to pensions and social security systems.

Finally, the options that could further advance the harmonization of internal regulations, including pensions, are those that already exist with several European countries such as Norway or Switzerland and with several European organizations. Thus, the United

Kingdom could join the European Free Trade Agreement (EFTA) which is an intergovernmental organization between Norway, Iceland, Liechtenstein and Switzerland, whose objective is the promotion of free trade and integration economic development of its members. The United Kingdom belonged to the EFTA until its entry into the EU in 1973, and it is really a club of countries that have decided not to join the EU, and whose content is quite empty. Another option is to integrate into the European Economic Area (EEA), which is nothing more than the agreement reached by the EU with the EFTA countries, except Switzerland (i.e. Norway, Iceland and Liechtenstein)⁷. The belonging to EEA allows these countries participate in the majority of the internal market without having to adhere to other European policies such as agriculture, fisheries or foreign policy. They must also apply European legislation in terms of the four community freedoms such as: social policies, environment, statistics and company law and other accompanying policies. On the contrary, the application of the common agricultural and fisheries policy (with certain qualifications), the common foreign and security policy, or the customs union are excluded from the scope of the EEA, among others. It seems unlikely that the United Kingdom is integrated into the EEA, since the level of internalization of European law is high and would not have decision-making power over the EU rules that would subsequently apply to it. While it could negotiate and conclude free trade agreements with third states, it would be forced to comply with almost all of the EU acts that govern the internal market, including the free movement of people, which was one of the main causes that motivated the Brexit. Another element to take into account is that the UK would have the obligation to pay a financial contribution to the EU, which would be very similar to the one they currently pay, something that they are also complaining about.

Within the previous framework, the EU has reached special treatment agreements with some countries, such as Norway or Switzerland (which is why the latter country is not integrated into the EEA). These special agreements could be one of the most likely options to be reached between the EU and the United Kingdom, in a soft Brexit environment, which would maintain a good part of the existing relationships, including pensions. In case an agreement could not be reached between the United Kingdom and the EU, another option would be a bilateral agreement between Spain and the United Kingdom. In the next sections, both scenarios are analyzed, the first with an eye on the example of the agreement between Switzerland and the EU. In each of these types of agreements there are arguments for and against the interests of Spain, the United Kingdom or the EU, so it could happen that neither of the parties adopts any of the previous scenarios and finally opts for a new legal framework tailored to their political and economic interests.

⁷ Therefore, Switzerland, not belonging to the EEA, unlike Norway, Iceland, Liechtenstein, does not have a vote in the approval of EU rules, as it does not have representatives in the parliament or in each of its territorial sectoral councils formed by the different ministerial representatives of the Council. See “Technical sheets on the European Union: The European Economic Area, Switzerland and the North”: http://www.europarl.europa.eu/atyourservice/es/displayFtu.html?ftuId=FTU_6.5.3.html

6.1. Bilateral agreement between the European Union and the United Kingdom (Switzerland Model).

In this sections the option of an agreement between the European Union and the United Kingdom is reviewed, similar to the one currently existing between Switzerland and the EU. It would be an agreement on the free movement of its citizens, which would cover almost all matters, including the principle of the exportability of pensions (MONEREO 2010). Switzerland does not formally belong to the EU or the European Economic Area (EEA), such as Norway, Iceland and Liechtenstein, but it is part of the single market, which means that the Swiss have the same rights to reside and work in any country. EEA country.

The relations between the European Union and Switzerland are governed by the agreements of the EFTA signed in 1972 and by the more than 120 sectoral agreements signed subsequently, which regulate the specific matters that give Switzerland a preferential commercial relationship with the EU. In the relationship between the EU and Switzerland there are seven bilateral agreements in force since 2002. These agreements deal with issues that include the free movement of people, the reciprocal opening of markets, air and land transport, technical barriers to trade, agriculture, and scientific cooperation. All these agreements contain the so-called “guillotine clause”, which means that they are legally binding agreements, so if one of the agreements is suspended, the rest of the treaties are automatically repealed.

The agreement most related to pensions and healthcare is the free movement agreement for people, whereby the Swiss are obliged to apply Community rules on the internal market, to accept the free movement of workers and to contribute to the budget of the EU, although its per capita contribution is about half of the British⁸. Thanks to this agreement, the Swiss Social Security worker who moves to another EU country, and vice versa, will have the right to preserve the mechanism of totalization of contribution periods and the application, where appropriate, of the pro-rata rule. On the other hand, the worker and the pensioner of the Swiss Social Security, as well as their relatives and beneficiaries of the Social Security health care, who temporarily move to the EU, and vice versa, will be entitled to receive benefits in kind they are necessary from a medical point of view, taking into account the nature of the benefits and the expected duration of the stay. They will therefore have the right to receive the really necessary treatment, including hospital treatment, and under the conditions established by Swiss legislation for their own nationals. Obviously, only authorized physicians and health institutions and hospitals on the cantonal lists can be used. Those who travel with their TSE to Switzerland are entitled to receive health benefits from compulsory health insurance,

⁸ Agreement on the Free Movement of Persons between the European Community and Switzerland (BOE 21.6.2002); Decision n° 189, 190 and 191 of the Administrative Commission for Social Security of migrant workers.

under the conditions established in the Federal Law on Health Insurance and in the rules of development. Because the Swiss system contemplates the participation of the insured in the health expenditure generated, those who travel to Switzerland on vacation and need to receive healthcare, they also have to assume the established franchises.

One of the simplest options that the British would have to maintain the current status quo of its citizens in terms of health care and pensions in another EU country, and vice versa, would be to replicate this agreement. However, this model does not like Brussels because of its complexity and because recently the Swiss have voted in a referendum (February 9, 2014) to limit the entry of citizens of EU countries to their labor market, through the establishment of quotas annuals that should be applied again in three years⁹.

Until now, the bilateral route between the EU and Switzerland has been preserved, which has allowed the Swiss Confederation to maintain mutually convenient relations with the EU bloc in the most diverse areas of the economy, without being part of the Union. Every time the community rules are updated, it must be negotiated again with Switzerland, hence the Commission wants to close a new agreement obliging the Swiss to automatically incorporate the new directives. In addition, it seems unlikely that the EU is willing to negotiate bilateral agreements in all matters, excluding the free movement of persons or restrictions on it, as it would create a negative precedent in the event that other Member States plan their withdrawal from The EU. In this sense, the logical thing is that, in order to maintain this type of privileged agreement, it is a “*sine qua non*” condition to keep the free movement of people in force, an aspect that could be thorny for the United Kingdom, since this was an important workhorse for the defenders of Brexit, and also for the Swiss, as indicated above (GALLEGO 2016, p. 217).

6.2.- Bilateral agreement between the United Kingdom and Spain.

If a special agreement between the United Kingdom and the EU cannot be approved, the other option for deepening agreements that go beyond the commercial aspects would be the individual negotiations between each Member State and the United Kingdom. Given the mutual interests between Spain and the United Kingdom, the bilateral agreement between Spain and the United Kingdom could be an option, which could have a content similar to the Community Regulations for the coordination of Social Security systems, which would ensure Social Security rights of the insured in each of the States, specifically the issues that concern about pensions.

⁹ Swiss citizens voted in referendum, on February 9, 2014, by a slight majority of 50.3%, in favor of the popular initiative “against mass immigration”, to introduce quotas on the maximum number of foreigners who could obtain a permit of residence. Thus, this limitation would affect the nearly 1,100,000 European citizens residing in Switzerland, mostly Germans and French, highly qualified. The referendum gave the Swiss government three years to renegotiate an agreement, and negotiations continue.

In this case, the bilateral agreement might be similar to the agreement established between Spain and the USA. This agreement is partially limited and does not foresee the totalization of insurance periods when any citizen claims for the right to pension in any of the two countries. In no case the amount of the pension is full, but proportional to the periods of insurance completed in the country in which the benefit is requested and the total amount in both countries. If you meet the requirements to access the pension in both countries, you can receive the benefit of the two parties.

Due to the intense relationship that exists between the United Kingdom and Spain and the continuous flow of people, if a bilateral agreement were signed, this should be more complete and foresee the totalization of periods and the export of benefits at least. Precisely, in order to ensure the free movement of workers and pensioners, a bilateral agreement was established between Spain and the United Kingdom in 1974, before being replaced by Community Regulation (EC) 883/2004. Regarding the scope of pensions in the said Convention, the principles of totalization of contribution periods and the “pro-rata” rule for access to pensions and determination of their amount were applied, both by the Social Security of Spain and by the from United Kingdom. Even the mechanisms of revaluation of pensions calculated by the Social Security of the United Kingdom and Spain were applied through the application of the international standard, although the regulation of the agreement had a lower level of improvement and a more limited scope.

Although Spain can reach bilateral agreements with the United Kingdom, this will only happen once the Brexit takes place, since the Spanish authorities have made it clear that they will not negotiate any aspect in parallel so as not to undermine the Union's negotiating position.

7. CONCLUSIONS

The decision of the United Kingdom to leave the European Union with the consequent loss of the British citizenship of the Union, raises many questions for the coordination of the pension system between Europe and the United Kingdom. The existence of a large number of British pensioners residing in Spain and of many Spanish workers permanently residing in the United Kingdom, means that the absence of an agreement between both countries supposes the loss of fundamental rights of a large number of citizens of both countries. In addition, the lack of agreement may jeopardize the present and future mobility of British workers and pensioners in Spain and Spanish in the United Kingdom.

The uncertainty is maximum regarding the future legal framework that will govern relations between the United Kingdom and the EU. In this article we have reviewed the most probable scenarios that for the Spaniards it considers the departure of the United Kingdom from the EU in terms of pension coverage between Spain and the United

Kingdom, from the most extreme case of its passage to non-EU countries, until intermediate solutions such as the bilateral signature of the calculation of pension's contributions or provision of health care services, and the consequences that would imply for permanent and temporary residents in the United Kingdom and vice versa. It is a highly complex debate that involves the collusion and confrontation of various rights, according to the prism adopted (residence, contributions, exportability, reciprocity, financing, national and community legislation) that, in many cases, prevail over the law social to receive healthcare or a pension.

To this is added another series of intrinsic problems to the management of the solution that is articulated: from fine-tuning the imbalances that affect the balance of payments between countries, due to the difficulty of harmonizing a coordinated and uniform policy on the part of both countries, until compensating for the repercussion that could lead to the States losing the accumulated pension rights in an environment of difficult financing of pension systems in Europe.

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