

## **MARCELLO CLARICH**

### **Europe and the post-Brexit. A new paradigm?**

The paper analyzes the current state of Brexit under the European and the UK legal frameworks and after the judgment adopted by the Supreme Court [2017] UKSC 5, and, in particular, if a piece of legislation is required to allow the Government to negotiate the exit from the Union.

Under Article 50(1) of the Treaty on the European Union any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements, however Article 50(2) imposes the Member State that decides to withdraw to notify the European Council of its intention. After the notification is sent, the Union and the State are required to conclude an agreement setting out the arrangements for the withdrawal. Within the UK constitutional framework the ministers enjoy a prerogative power to enter into and to terminate treaties without recourse to Parliament, however, ministers are not normally entitled to exercise any power they might otherwise have if it results in a change in UK domestic law. In the regard of the European Union, the UK is withdrawing from treaties that, through the European Community Act (1972), are a source of domestic legal rights for UK citizens. The conclusion reached by the Supreme Court is that ministers alone cannot achieve a major change to UK constitutional arrangements: Parliamentary legislation is required. A Government Bill has been approved by the House of Commons, if signed into law it will give the Prime Minister the power to notify the intention to withdraw from the EU without imposing any condition.