

# Sunset Clauses in the Brexit Process

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**Room 723, Cheng Yu Tung Tower**

**Centennial Campus, The University of Hong Kong**

Since the activation of article 50 of the Treaty on European Union (TEU) in March 2017, the UK Government has tabled in Parliament the European Union Withdrawal Bill (EUWB) – an elephantine law, to repeal on the one hand the European Communities Act and on the other hand to transpose the EU secondary legislation – regulations and directives already enforceable in the UK – into domestic laws and to implement the withdrawal agreement.

The proposed solution in the EUWB for the problem of how to handle and materialise the process of Brexit is the well-established mechanism of delegation to the executive with the so called Henry VIII powers. Indeed Henry VIII powers is an apparatus that enriches the law-making procedure with flexibility and efficiency. However, such use executive power shall be subject to a number of safeguards, legal and political.

Accordingly, among the legal safeguards, the EUWB involves the use of sunset clauses. In essence, sunset clauses are statutory provisions providing that the delegated power will expire automatically on a prescribed date, unless it is re-authorised by the legislature. For example, the power to implement the withdrawal agreement (clause 9) is broad, but the bill as drafted seeks to fetter this discretion at paragraph 4, which states that ‘[n]o regulations may be made under this section after exit day’. In this talk, Dr Kouroutakis will explore this technique, building on the ideas in his recent book, *The Constitutional Value of Sunset Clauses: An Historical and Normative Analysis* (Routledge, 2017).

The ideas in this talk may be useful for the enactment of controversial legislation in Hong Kong, such as any future introduction of national security legislation under Article 23 of the Hong Kong Basic Law.

**Dr. Antonios Kouroutakis** is Assistant Professor at IE University in Madrid, Spain since 2017. He has taught a variety of law courses and conducted research as a postdoctoral fellow at the City University of Hong Kong, HKSAR, the Free University of Berlin, Germany and Aristotle University of Thessaloniki, Greece and has participated in the HR-UP research group at Free University, Berlin, Germany in 2015. Dr. Kouroutakis’ research interests lie mainly in the field of public law and regulation. In particular, he is interested in the concept of separation of powers, rule of law, emergency legislation, and the regulation of new technologies; he has published widely on these topics in international and peer reviewed journals, while his work on the constitutional value of sunset clauses and on the constitution of Somalia has been cited in numerous reports.



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