



Laga Newsflash

CJEU confirms that the United Kingdom can unilaterally revoke Article 50

In a landmark ruling on 10 December 2018, the Court of Justice of the European Union (CJEU) confirmed that the United Kingdom can unilaterally withdraw its intention to withdraw from the European Union. It does not require consent from any other Member State, but does require democratic process in accordance with UK constitutional requirements.

A unilateral withdrawal can occur as long as all three below conditions remain:

- The withdrawal agreement concluded between the United Kingdom and the European Union has not yet entered into force, or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended unanimously by all Member States and the United Kingdom, has not expired
- The decision to withdraw the notice of the intention to leave is taken in accordance with the United Kingdom's constitutional requirements
- The notice informing the European Council in writing of the revocation decision is worded in an unequivocal and unconditional manner

In order to dispel any doubts as to the United Kingdom's status should it exert its rights to revoke Article 50, the CJEU finds that the purpose of the revocation is to confirm the United Kingdom's EU membership under terms that are unchanged regarding its status as a Member State. The revocation brings the withdrawal procedure to an end. Put

differently, if the United Kingdom revokes Article 50 and meets the conditions laid down by the CJEU, it will remain an EU Member State (on the same terms as it is a member now).

CJEU reasoning

In coming to its finding on and reading of Article 50 Treaty on European Union ("TEU", the Treaty provision on which Brexit is based), the CJEU relies on its tried interpretation approach of not only looking at the wording and objectives of the treaty provision at hand, but also at the context and provisions of EU law as a whole.

In the absence of any express wording on revoking the notification of the intention to withdraw, such revocation is subject to the rules laid down in Article 50(1) TEU. Consequently, such revocation can also be unilateral, provided the decision is taken in full respect of the democratic process and constitutional requirements in the United Kingdom. Such unilateral revocation should occur before the end of the two-year period (subject to any extension agreed between the parties) specified in Article 50 (currently set at 29 March 2019).

When looking at the context of Article 50 TEU, the CJEU refers to a number of recitals in the TEU and the Treaty on the Functioning of the European Union ("TFEU"), which all mention that those treaties have the purpose to create an ever closer union among the peoples of Europe, and specifically in the second recital in the preamble of the TFEU, which reminds that the European Union aims to eliminate the barriers which divide Europe. In addition, it also underlines the importance of the values of liberty and democracy, which are among the common values referred to in Article 2 TEU and in the preamble to the Charter of Fundamental Rights of the European Union. Finally, the CJEU also refers to the fact that citizenship of the Union is intended to be the fundamental status of nationals of the Member States. Consequently, any withdrawal of a Member State is liable to have considerable impact on the rights of all Union citizens, including, their right to free movement.

Based on this contextual interpretation, the CJEU finds that a Member State cannot be forced to withdraw from the European Union against its will. Consequently, if the notification of the intention to leave the European Union would inevitably lead to the withdrawal of the Member State, then such a Member State would be forced to leave the European Union despite its wish – as expressed through its democratic process in accordance with its constitutional requirements – to remain a member of the EU. Indeed, the CJEU states that such a result would be inconsistent with the values and goals of creating an ever closer union and of eliminating barriers dividing Europe.

The CJEU also finds support for its views in the wording of a similar article in the draft Treaty establishing a Constitution for Europe as well as in Articles 65-68 of the Vienna Convention on the Law of Treaties.

In order to further dispel fears expressed by the Commission and the Council that allowing unilateral revocation of the intention to leave the European Union would allow Article 50 TEU to be used as a negotiation tool, or to extend the duration of exit negotiations indefinitely by alternating between notifying an intention to leave and a revocation of such notification when the end of the two-year negotiation period is in sight, the CJEU introduces the concept that the unilateral revocation must be done in writing and must be unequivocal and unconditional in that it confirms that Member State's intention to remain a member of the European Union.

Practical consequences

Following the CJEU decision, if all constitutional requirements in the United Kingdom are abided by, the United Kingdom can unilaterally revoke its notice of intention to leave the European Union, provided that the revocation is made before the withdrawal agreement enters into force or, if no such agreement has been concluded, before the two-year period laid down in article 50(3) TEU expires. Such revocation must occur in writing and be unequivocal and unconditional, the purpose being to confirm the United Kingdom's EU membership under terms unchanged regarding the United Kingdom's status as a Member State.

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