



Press and Information

General Court of the European Union
PRESS RELEASE No 184/18
Luxembourg, 26 November 2018

Judgment in Case T-458/17
Shindler and Others v Council of the European Union

Brexit: the application for annulment of the decision authorising the opening of Brexit negotiations, brought by thirteen British citizens who live in EU Member States other than the UK, is inadmissible

The General Court finds that the decision in question does not directly affect the legal situation of the British citizens who brought the action

Thirteen British citizens residing in Member States other than the UK are asking the General Court to annul the decision of the Council of the European Union authorising the opening of negotiations on Brexit.

The applicants claim that they were deprived of the right to vote in the referendum on account of their expatriation, that the contested decision has a direct impact on the rights which they derive from the Treaties and constitutes an act by which the Council accepted the UK's notification of intention to withdraw from the EU. They also assert that the contested decision does not include the objective of ensuring that they maintain their status as EU citizens and submit that the withdrawal procedure is void in the absence of constitutional authorisation. Lastly, the applicants claim that this action before the General Court is their sole effective form of remedy before the EU Courts before the inescapable loss of their status as EU citizens on 29 March 2019.

The Council asks the General Court to declare the action inadmissible and to hold that it cannot accordingly be heard, since the contested decision is not open to challenge by natural or legal persons and the applicants have no interest or standing to bring proceedings against it. The Council claims that the contested decision does not affect the applicants' legal situation; it is merely a preparatory act and draws the consequences of the UK's notification of its intention to withdraw. It is therefore only at the end of the Article 50 TEU¹ procedure that the rights of the applicants are liable to be affected.

In today's judgment, the General Court assesses whether the action for annulment brought by the 13 British citizens is admissible, that is to say, whether it is brought against a decision which affects their legal situation. It finds that the decision is not addressed to the applicants and recalls, as a result, the rule that, in order to bring an action, the act must, at the very least, be of direct concern to the applicants² and directly affect their legal situation. The Court notes that, **although the decision of the Council authorising the opening of the Brexit negotiations has legal effects as regards the relations between the EU and its Member States and between the EU institutions, in particular the Commission, which is authorised by that decision to open negotiations for an agreement with the UK, it does not directly affect the legal situation of the applicants.**

¹ Article 50 TEU provides that any Member State may decide to withdraw from the EU in accordance with its own constitutional requirements. A Member State which decides to withdraw is required to notify the European Council of its intention. In the light of the guidelines provided by the European Council, the EU must negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the EU. That negotiated agreement will be concluded on behalf of the EU by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

² Fourth paragraph of Article 263 TFEU.

The Court takes the view that the decision does not alter the legal situation of British citizens residing in an EU Member State other than the UK, whether that be their situation at the date of the contested decision or their situation as from the date of the UK's withdrawal from the EU. Therefore, according to the Court, the applicants are wrong to claim that they are directly affected, inter alia as regards their status as EU citizens and their right to vote in European and municipal elections, their right to respect for their private and family life, their freedom to move, reside and work, their right to own property and their right to social security benefits. The Court adds that, although it is true that the applicants' legal situation, particularly as regards their status as EU citizens, is likely to be affected when the UK withdraws from the EU, whether or not a withdrawal agreement can be concluded, such a potential effect on their rights — the nature and extent of which cannot, moreover, be known at the present time — does not result from the contested decision.

The Court states, in addition, that the contested decision does not contain any decision approving or accepting the notification of intention to withdraw of 29 March 2017 and takes the view, therefore, that the applicants are not justified in claiming that the contested decision constitutes an implicit act by which the Council accepted the notification of intention to withdraw of 29 March 2017 or that the contested decision acknowledged the UK's exit from the EU.

As regards the maintenance of the applicants' status as EU citizens, the contested decision is merely a preparatory act which cannot prejudice the content of any final agreement, particularly as regards the scope of any provisions on the protection of the status and rights of UK citizens in the remaining 27 EU Member States, especially as the contested decision is not intended to establish those rights in the event that no agreement is reached. The applicants cannot therefore claim that the contested decision provides no certainty as to the rights of expatriate UK citizens.

Regarding the alleged absence of definite constitutional authorisation based on the votes of all UK citizens, the Court notes that that argument seeks to contest the lawfulness of the contested decision. However, such an argument has no bearing on the admissibility of the action as it does not call into question the fact that the contested decision does not directly affect the legal situation of the applicants.

As for the argument based on the lack of any other effective form of remedy before the EU Courts, the Court notes, first, that any loss of status as an EU citizen does not come within the scope of the contested decision since, as regards the applicants, that decision has merely preparatory value. Second, the Court notes that judicial review of compliance with the EU legal order is ensured not only by the Court of Justice and General Court but also by the courts and tribunals of the Member States. The act by which the UK notified the European Council of its intention to withdraw from the EU and the fact that certain British citizens did not have the right to vote were open to challenge before a UK court. Moreover, as regards the applicants' claim that the action before the General Court is the only way in which they can ensure their right to effective judicial protection in the event of a dispute over any future withdrawal agreement, since the UK could consider itself not to be bound by a decision of the EU Courts, the Court states that the admissibility of their action is not dependent on whether the UK considers itself bound by a decision of the EU Courts, but on the condition that the contested decision must directly affect the legal situation of the applicants.

The General Court therefore dismisses the action as inadmissible since the decision of the Council authorising the opening of negotiations on Brexit does not produce binding legal effects capable of affecting the interests of the applicants by bringing about a distinct change in their legal position.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the EU that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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