



Court of Justice of the European Union

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Press and Information

Advocate General's Opinion in Case C-621/18  
Wightman and Others v Secretary of State for Exiting the European Union

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**Advocate General Campos Sánchez-Bordona proposes that the Court of Justice should declare that Article 50 TEU allows the unilateral revocation of the notification of the intention to withdraw from the EU**

*That possibility continues to exist until such time as the withdrawal agreement is formally concluded*

At the request of various MSPs, MPs and MEPs, a Scottish court, the Court of Session, Inner House, First Division (UK), asks the Court of Justice whether a Member State which has notified the European Council of its intention to withdraw from the EU in accordance with Article 50 TEU may unilaterally revoke that notification and, if so, subject to what conditions.

As the UK Parliament has to give its final approval, both if a withdrawal agreement is reached and in the absence of that agreement, various members of that parliament consider that if the notice of the intention to withdraw were revocable, this would open the possibility for the UK to remain in the EU in the face of an unsatisfactory Brexit. The Scottish court appears to adopt that position, reasoning that the Court of Justice's answer will have the effect of clarifying the precise options open to MPs when casting their votes.

The UK Government contends that the question referred for a preliminary ruling is inadmissible, given that it is hypothetical and merely theoretical, since there is no indication that the UK Government or Parliament are going to revoke the notification of the intention to withdraw.

In today's Opinion, Advocate General Manuel Campos Sánchez-Bordona considers that none of the conditions which, according to the Court's case-law, govern whether a reference for a preliminary ruling should be declared inadmissible, are satisfied. **According to the Advocate General, the dispute is genuine, the question is not merely academic, nor premature or superfluous, but has obvious practical importance and is essential in order to resolve the dispute.** He adds that the power to interpret Article 50 TEU definitively and uniformly is that of the Court of Justice which must carry out considerable interpretative work in order to determine whether or not that article allows the notification of the intention to withdraw to be revoked unilaterally.

In answer to the question from the Scottish court, the Advocate General proposes that the Court of Justice should, in its future judgment, declare that **Article 50 TEU allows the unilateral revocation of the notification of the intention to withdraw from the EU**, until such time as the withdrawal agreement is formally concluded, provided that the revocation has been decided upon in accordance with the Member State's constitutional requirements, is formally notified to the European Council and does not involve an abusive practice.

**The Advocate General interprets Article 50 TEU**, having recourse, with regard to what is not expressly provided for in that article, to the relevant provisions of the Vienna Convention on the Law of Treaties on which Article 50 TEU is based. Pursuant to Article 68 of that convention,

notifications of withdrawal from an international treaty may be revoked at any time before they take effect.<sup>1</sup>

The Advocate General emphasises that withdrawal from an international treaty, which is the reverse of a treaty-making power, is by definition a unilateral act of a State party and a manifestation of its sovereignty. Unilateral revocation would also be a manifestation of the sovereignty of the departing Member State, which chooses to reverse its initial decision. The Advocate General deduces from his systematic analysis of Article 50 TEU various reasons in favour of the notification of the intention to withdraw being unilaterally revocable. First, the conclusion of an agreement is not a prerequisite for the withdrawal to be completed. Secondly, Article 50(2) TEU states that a Member State which decides to withdraw is to notify the European Council of 'its intention' — and not of its decision — to withdraw, and such an intention may change. Thirdly, the unilateral nature of the first phase of the procedure under Article 50 TEU, in which the Member State decides to withdraw from the EU in accordance with its own constitutional requirements, is projected onto the subsequent phase (of negotiating the terms of its withdrawal with the EU institutions), in such a way that if the withdrawal decision is revoked in accordance with the departing Member State's constitutional procedures, its constitutional foundation will disappear. Lastly, the rejection of revocation would in practice entail the forced exit from the EU of a State which, according to the Court of Justice's recent case-law,<sup>2</sup> continues to be an EU Member State in all respects. It would be illogical to force that Member State to withdraw from the EU in order to then have to negotiate its accession. In the Advocate General's view, the legal acts adopted by reason of the negotiations are measures concerned with the negotiation or agreements adopted with a view to the future withdrawal, and do not preclude the notification of the intention to withdraw from being unilaterally revoked.

The Advocate General states that Article 50 TEU is an expression of the principle of respect for the national identities of the Member States, in allowing them to withdraw if they consider that that national identity is incompatible with membership of the EU. In his view, there is no reason that, conversely, that Member State may not link its identity to its integration into the EU. In the view of Mr Campos Sánchez-Bordona, not placing obstacles in the way of the continued EU membership of a Member State that decides to leave the EU, but then changes its stance, in accordance with its constitutional requirements, and wishes to continue being a member, is an especially appropriate interpretative approach, which accords with the objective of advancing the process of integration. That approach is, in addition, the most favourable to the protection of the rights acquired by EU citizens, which the withdrawal of a Member State will inevitably restrict.

However, that possibility of unilateral revocation is subject to **certain conditions and limits**. First, like the notification of the intention to withdraw, the unilateral revocation must be notified by a formal act to the European Council. Secondly, it must respect national constitutional requirements. If, as is the case in the UK, prior parliamentary authorisation is required for the notification of the intention to withdraw, it is logical that the revocation of that notification also requires parliamentary approval. There is also a temporal limit on the possibility of revocation, since revocation is possible only within the two-year period that begins when the intention to withdraw is notified. The principles of good faith and sincere cooperation must also be observed, in order to prevent abuse of the procedure laid down in Article 50 TEU.

**The Advocate General rejects the contention that Article 50 TEU only allows the possibility, put forward by the Commission and the Council, of a revocation following a unanimous decision of the European Council.** In his opinion, a revocation by mutual consent of the departing Member State which changes its position and the EU institutions with which it is negotiating its withdrawal **is possible. However, this would not prejudice unilateral revocation**, which the departing Member State always maintains under Article 50 TEU. On the other hand, the Advocate General considers that **to make the possibility of revocation conditional upon the adoption of a unanimous decision of the European Council would be incompatible with**

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<sup>1</sup> The Vienna Convention on the Law of Treaties, adopted in Vienna on 23 May 1969. United Nations Treaty Series, Vol. 1155, p. 331.

<sup>2</sup> Case: [C-327/18 PPU RO](#); see Press Release No. [135/18](#).

**Article 50 TEU.** To accept that the European Council, acting by unanimity, should have the last word on the revocation increases the risk of the Member State leaving the EU against its will, since the right to withdraw from (and, conversely, to remain in) the EU would no longer be subject to the control of the Member State, its sovereignty and its constitutional requirements. In those circumstances, it would suffice for one of the remaining 27 Member States to oppose the revocation in order for the will of the Member State that has expressed its desire to remain in the EU to be frustrated.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*Unofficial document for media use, not binding on the Court of Justice.*

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

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*Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*