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## **The United Kingdom is free to revoke unilaterally the notification of its intention to withdraw from the EU**

*Such a revocation, decided in accordance with its own national constitutional requirements, would have the effect that the United Kingdom remains in the EU under terms that are unchanged as regards its status as a Member State*

On 23 June 2016, a referendum of the United Kingdom electorate produced a majority in favour of that Member State's leaving the European Union. On 29 March 2017, the British Prime Minister notified the European Council of the UK's intention to withdraw from the European Union under Article 50 TEU. This article provides that following such a notification, the Member State concerned negotiates and concludes a withdrawal agreement with the EU. The EU Treaties then cease to apply to that Member State from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification of the intention to withdraw and any possible extension.

On 19 December 2017, a petition for judicial review was lodged in the Court of Session, Inner House, First Division (Scotland, United Kingdom) by members of the UK Parliament, the Scottish Parliament and the European Parliament to determine whether the notification referred to in Article 50 can be revoked unilaterally before the expiry of the two year period, with the effect that such revocation would result in the United Kingdom remaining in the EU. On 3 October 2018, the Court of Session referred this question to the Court of Justice for a preliminary ruling, pointing out that the response would allow members of the House of Commons to know, when exercising their vote on a withdrawal agreement, whether there are not two options, but three, namely withdrawal from the European Union without an agreement, withdrawal from the European Union with an agreement, or revocation of the notification of the intention to withdraw and the United Kingdom's remaining in the European Union.

Because of the urgency of its request with respect, notably, to the fact that the withdrawal agreement can only be ratified if that agreement, and the framework on the future relationship between the United Kingdom and the European Union are approved by the UK Parliament, the Court of Session asked the Court of Justice to apply the expedited procedure, which was granted by the President of that court.<sup>1</sup> The expedited procedure enables the Court to give its rulings quickly in exceptionally urgent cases by reducing procedural time-limits and giving such cases absolute priority.

**In today's judgment, the Full Court has ruled that, when a Member State has notified the European Council of its intention to withdraw from the European Union, as the UK has done, that Member State is free to revoke unilaterally that notification.**

**That possibility exists for as long as a withdrawal agreement concluded between the EU and that Member State has not entered into force or, if no such agreement has been concluded, for as long as the two-year period from the date of the notification of the intention to withdraw from the EU, and any possible extension, has not expired.**

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<sup>1</sup> Order of the President of the Court of Justice of 19 October 2018 *Wightman and Others* ([C-621/18](#))

**The revocation must be decided following a democratic process in accordance with national constitutional requirements. This unequivocal and unconditional decision must be communicated in writing to the European Council.**

**Such a revocation confirms the EU membership of the Member State concerned under terms that are unchanged as regards its status as a Member State and brings the withdrawal procedure to an end.**

In its reasoning, the Court begins by observing that, according to the Court of Session, the case before that latter court raises a genuine issue giving rise to a dispute which it is required to resolve and that the judgment of the Court of Session will have the effect of clarifying the options open to MPs who must decide on the ratification of the agreement negotiated between the UK and the EU. Replying to the arguments as to the admissibility of the case brought by the UK government and the Commission, the Court finds that the question referred by the Court of Session, regarding the interpretation of Article 50 TEU, is relevant and not hypothetical, given that it is precisely the point at issue in the case pending before the Court of Session.

As to the substance of the question, the Court rules that Article 50 TEU does not explicitly address the subject of revocation. It neither expressly prohibits nor expressly authorises revocation.

That being so, the Court notes that Article 50 TEU pursues two objectives, namely, first, that of enshrining the sovereign right of a Member State to withdraw from the European Union and, secondly, that of establishing a procedure to enable such a withdrawal to take place in an orderly fashion. According to the Court, the sovereign nature of the right of withdrawal supports the conclusion that the Member State concerned has a right to revoke the notification of its intention to withdraw from the EU for as long as a withdrawal agreement has not entered into force or, if no such agreement has been concluded, for as long as the two-year period, and any possible extension, has not expired.

**In the absence of an express provision governing revocation of the notification of the intention to withdraw, that revocation is subject to the rules laid down in Article 50(1) TEU for the withdrawal itself, with the result that it may be decided unilaterally, in accordance with the constitutional requirements of the Member State concerned.**

**The revocation by a Member State of the notification of its intention to withdraw reflects a sovereign decision to retain its status as a Member State of the European Union, a status which is neither suspended nor altered by that notification.**

The Court considers that it would be inconsistent with the EU Treaties' purpose of creating an ever closer union among the peoples of Europe to force the withdrawal of a Member State which, having notified its intention to withdraw from the EU in accordance with its constitutional rules and following a democratic process, decides to revoke the notification of that intention through a democratic process.

To subject that right to revoke to the unanimous approval of the European Council as the Commission and Council proposed, would transform a unilateral sovereign right into a conditional right and would be incompatible with the principle that a Member State cannot be forced to leave the European Union against its will.

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**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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