

CJEU Paves Way to Exit from Brexit

Thomas Wahl



News

The United Kingdom is free to unilaterally revoke the notification of its intention to withdraw from the EU. Unanimous approval by the European Council regarding this revocation is not necessary. This was the response of the CJEU plenary to a request for a preliminary ruling by the Scottish Court of Session ([Case C-621/18, Wightman and Others v. Secretary of State for Exiting the European Union](#)).

The question of whether the notification of the UK's intention to withdraw from the EU (made in accordance with Art. 50 TEU) can be revoked was posed by members of the UK Parliament, the Scottish Parliament, and the European Parliament. The intention was to provide guidance to the members of the House of Commons when exercising their vote on the withdrawal agreement.

With the [CJEU's answer of 10 December 2018](#), the UK now has three (instead of two) options since the procedure of Art. 50 TEU was triggered by the British Prime Minister's notification to leave the EU following the Brexit referendum on 23 June 2016:

- Withdrawal from the EU without an agreement;
- Withdrawal from the EU with an agreement;
- Revocation of the notification of the intention to withdraw, with the UK remaining in the EU.

The judges in Luxembourg stressed, however, that the revocation is subject to the national constitutional requirements. Furthermore, a revocation is subject to the following:

- Only possible as long as a withdrawal agreement between the EU and the UK has not entered into force, or, if no agreement is concluded, as long as the two-year period (or any possible extension) from the date of the notification of the intention to withdraw has not expired;
- The revocation is unequivocal and unconditional;
- The revocation must be communicated in writing to the European Council.

A revocation would have the effect that the UK remains in the EU under the terms of its current status and that the withdrawal procedure is put to an end.

In its reasoning, the CJEU observed that the revocation is not expressly governed by Art. 50 TEU, but follows the same rules as the withdrawal itself. Consequently, the EU Member State that notifies its intention to withdraw can unilaterally decide not to do so, because it is the sovereign decision to retain a status as a EU Member State.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947

<https://eucrim.eu>



An approval of the revocation by the other EU Member States (as put forward by the Council and the Commission in the proceedings) would be counter to the principle that a Member State cannot be forced to leave the EU against its will.

The judgment of the CJEU extends the spectrum of action for UK parliamentarians and can be termed “integration-friendly.” It remains rather unlikely, however, that the option of the revocation will be heeded. First, the UK must overcome the current political impasse.

About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by
the European Union**