

The Development of European Integration

Additional Chart: Withdrawal from the Union

Chart 2 | 25a
Topic:

A Member State may decide to withdraw from the European Union.

Art. 50 TEU on withdrawal from the Union (introduced through the Lisbon revision)

Issues to be considered by a Member State contemplating withdrawal

Internal decision making on withdrawal

Art. 50(1) TEU:
Decision to withdraw from the Union in accordance with the Member State's own constitutional requirements

See **Chart 2/25b**

Arrangements with the Union for the withdrawal

Art. 50(2)-(4) TEU:
Negotiation and conclusion of the withdrawal agreement following the procedural rules under Union law, keeping in mind the legal effects of withdrawal

- There is no guarantee under Art. 50 TEU of a withdrawal agreement.
- Withdrawal may also take effect without such an agreement.

See **Chart 2/25b, Chart 2/25c**

Framework for the future relationship with the Union

Not regulated in Art. 50 TEU but referred to in Art. 50(2) TEU:
„To be taken account of“ when negotiating and concluding the withdrawal agreement; see **Chart 2/25b**

- There is no guarantee under Art. 50 TEU of a suitable alternative arrangement.
- In principle the future framework for the relationship of the State in question with the Union is to be defined separately, possibly (but not necessarily) through an agreement.

See **Chart 2/25d**

Simultaneous negotiation

In particular from the perspective of the withdrawing Member State, ideally the withdrawal agreement and the framework for the future relationship with the Union are negotiated together.

Notes:

- So far, practical experience with Art. 50 TEU is lacking.
- Following the advisory referendum on EU membership of 23 June 2016, the UK is expected to become the first ever Member State to withdraw; see **Chart 2/25b**.

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Additional Chart: Withdrawal procedure

Chart 2 | 25b

Topic:

Article 50 TEU defines the withdrawal procedure.

Art. 50 TEU: withdrawal procedure

National decision to withdraw, Art. 50(1) TEU

„Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.“

E.g. UK as of 2016:

- Advisory referendum vote of 23 June 2016: 48,1% Remain to 51,9% Leave („Brexit“).
- It was disputed whether the decision to withdraw, and the right to trigger the EU procedure, is for the UK Government alone or for the UK Parliament and the devolved assemblies of Scotland, Wales and Northern Ireland. This was decided by the UK Supreme Court in *Miller et al. (2017)*: „Where implementation of a referendum result requires a change in the law [...], and statute has not provided for that change, the change must be made [...] through [UK] Parliamentary legislation.“
- March 2017: European Union (Notification of Withdrawal) Act 2017.

Withdrawal procedure on the level of the EU, Art. 50(2)-(4) TEU

Notification

Member State wishing to withdraw notifies the European Council of its intentions.

Negotiation

Negotiation of the withdrawal agreement in accordance with Art. 218(3) TFEU:

- Arrangements for withdrawal,
- Taking account of the framework for the future relationship withdrawing State – Union; see **Chart 2/25d**.

After two years

Has political agreement on the withdrawal agreement been reached?

No

Yes

Conclusion

Conclusion of the withdrawal agreement:

European Parliament consents to negotiation result.

Conclusion on behalf of the Union by the Council (of Ministers), acting by a qualified majority, defined in accordance with Art. 238(3)(b) TFEU.

Withdrawal without a withdrawal agreement

The Union Treaties cease to apply to the State in question in principle two years after notification (extension is possible); see **Chart 2/25c**.

Withdrawal with a withdrawal agreement

The Union Treaties cease to apply to the State in question from the date of entry into force of the withdrawal agreement, in accordance with this agreement; see **Chart 2/25c**.

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Additional Chart: Effects of withdrawal

Chart 2 | 25c

Topic:

The withdrawal of a Member State from the European Union has far-reaching legal effects.

Far-reaching legal effects of a withdrawal from the European Union

Legal starting point, Art. 50(3)TEU

„The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.“

Notes:

- This implies amendments to Art. 52 TEU (list of Member States) and Art. 355 TFEU (territorial scope of the Treaties).
- The State in question might still be mentioned in the preambles of the TEU and/or the TFEU, which refer to the Member States that signed the original Treaties. A footnote might state the withdrawal.

Consequences of no longer being a Member State: examples

With respect to the Union's means and specific objectives, Art. 3(2)-(5) TEU

Area of freedom, security and justice

E.g.: if it participated in these sub-fields, the State in question is no longer part of the Schengen and Dublin systems.

Internal market

The State in question no longer belongs to the Union's internal market.

Economic and Monetary Union

E.g.: if it had adopted the euro, the State in question can no longer be a member of the Eurozone.

Relations with the wider world

E.g.: treaties concluded by the Union will no longer apply to the State in question. The State can/must conclude its own treaties.

With respect to EU citizenship, Arts. 20 and 21 TFEU

The citizens of the State in question are no longer Union citizens, nor do they enjoy the rights based on that status (e.g. free movement, in particular for those who are not economically active, equal treatment in relation to social assistance, political participation).



Possibilities to address such issues on the level of the EU

See **Chart 2/25d**

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Additional Chart: Addressing issues raised by the withdrawal

Chart 2 | 25d

Topic:

To some extent, the legal effects of a withdrawal from the European Union may be mitigated through the withdrawal agreement and/or an alternative arrangement for the future relations between the State in question and the Union.

Possibilities to address the legal effects of a withdrawal from the Union

Three main avenues on the level of the EU

Through the withdrawal agreement

May address certain effects through e.g.:

- Transitional rules;
- The protection of acquired rights, e.g. of citizens having exercised Union rights before the withdrawal of the State in question (maintenance of residence rights etc.).

Note:

Protection of acquired rights is not guaranteed through Art. 50 TEU, different from e.g. Art. 23 of the EU-Swiss Agreement on the free movement of persons.

Through an alternative arrangement for post-membership relations

Various possibilities in theory, notably:

- EFTA and EEA membership („Norway model“);
- Customs union („Turkey model“);
- Sectoral agreements („Switzerland model“);
- Free trade and investment agreement of the modern type („Canada model“);
- No special arrangement, WTO law only („Hong Kong model“).

E.g. the UK Government:

- „Alternatives to Membership: possible models for the United Kingdom outside the European Union“ (May 2016);
- „The United Kingdom's exit from and new partnership with the European Union“ (February 2017).

Through rejoining the Union

Mentioned in Art. 50(5) TEU, though politically perhaps unlikely:

„If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.“

Potential **challenges**, if based on EU market access rules (see EU Council conclusions on a homogeneous extended single market, 2014)

Substance

Will an agreement providing for partial market access be possible?

E.g. UK: internal market minus full free movement of persons?

Institutional framework

What will be the rules on updating and interpreting the agreement as well as on international supervision and dispute settlement?

Compare Switzerland: current negotiations on these issues

Notes:

There may also be arrangements outside the EU, including e.g.:

- National rules on the immigration into the State in question;
- Conclusion of treaties with other states (though in the case of EU Member States only insofar as the EU does not enjoy an exclusive competence in the field in question; see **Chart 4/2**, **Chart 4/7**).