

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

- 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.

Note:

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 empowers the Prime Minister to notify the Union.

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 intention.

E.g. UK on 29 March 2017: notification of the UK's intention to withdraw from the EU and from Euratom

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 following notification

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

Exempels of possible issues:

- 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.);
- Budget and financial obligations of the exiting state / the EU.

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): „an ambitious and comprehensive Free Trade Agreement“.

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 [TEU].“

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 e.g. 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**).

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Additional Chart: Constitutional framework for the content of the agreements

Chart 2 | 25e

Topic:

The parties' constitutional orders form the legal limits with respect to the content of both the withdrawal agreement and any agreement for post-membership relations.

Legal boundaries with respect to the content of the withdrawal agreement and of a post-membership agreement

The parties' respective constitutional frameworks

The respective constitutional orders of the parties set limits to what can be agreed to in the withdrawal agreement and in the post-membership agreement.

Withdrawing Member State

National constitutional law, depending on the state concerned

E.g. the somewhat special case of the UK:

- The UK Union with its devolved territories of Scotland, Wales and Northern Ireland is based on two constitutional contracts, namely the Acts of Union of 1707 and 1800, as well as the Devolutions Acts of the late 1990s;
- The otherwise unwritten constitution is founded primarily on the sovereignty of the UK Parliament, though 'constitutional statutes' can limit the Parliament's sovereignty, e.g. the Human Rights Act 1998;
- The UK Executive, through the 'Royal Prerogative', has the power to enter into and get out of 'normal' international agreements (though not in the case of getting out of the EU Treaties; *Miller et al.*, 2017; see **Chart 2/25b**).

Note: the UK does not have a written constitution in the same manner as do the continental EU Member States.

Judicial control through national courts

According to national procedural law, including in particular action to the national constitutional court for infringement of the constitution

E.g. UK:
Appeal to the UK Supreme Court as in *Miller et al.* (2017); see **Chart 2/25b**

EU

The Union's constitutional order, including notably:

- The Charter of Fundamental Rights (CFR);
- The autonomy of the EU legal order, as recognised by the CJEU in its case law; e.g. Opinions 1/91 (*EEA I*), 1/92 (*EEA II*) and, more recently, 1/09 (*Patent Court*);
- Specifically with respect to third countries (i.e. Non-Member States, including the former Member State which has withdrawn): the principles expressed in Art. 3(5) TEU (relations with the wider world) and in Art. 8 TEU (neighbourhood policy).

See with respect to the UK:

European Parliament Resolution of 5 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union

Judicial control through national courts

Indirectly through a request for a preliminary ruling of the CJEU on the validity of the agreement, Art. 267 TFEU

See **Chart 12/2**

Judicial control through the CJEU

- *Ex ante* control: CJEU Opinion on the draft agreement, Art. 218(11) TFEU;
- *Ex post* direct challenge: action for annulment of the EU ratification act, Art. 263 TFEU;
- *Ex post* indirect challenges:
 - a) preliminary ruling, Art. 267 TFEU;
 - b) plea of illegality of the agreement in the context of another EU act, Art. 277 TFEU.

See **Chart 12/2**