

Background and Framework of the Right to Withdraw

Article 50 TEU and its Alternatives

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Introduction

Theresa May:

„Brexit means Brexit“

David Davis:

„Brexit means that there is a national mandate for leaving the EU“

Are things at least clear from a legal perspective?

Background of the Right to Withdraw

A. Historic Perspective

- The right to withdraw was introduced with the treaty of Lisbon in 2010 and goes back to the (failed) European Constitution.
- Unwritten right to exit the Union existed before according to the majority of scholars, yet required a unanimous decision of all Member States.
- Art. 50 TEU (surprisingly) introduced a unilateral right to withdraw.
- Legally and politically this now has to be regarded as the only possible way to exit the Union.

Background of the Right to Withdraw

B. The Unilateral Right to Withdraw (Art. 50 (1) TEU)

- Any Member State can decide to withdraw from the Union according to its own constitutional requirements.
- Exit process does not start before the exit-wish is notified to the European Council (probably end of march 2017).
- Problem: What are the constitutional requirements in Britain?
 - Referendum was not binding, Parliament could thus prevent notification (unrealistic).
 - Does Parliament need to authorize Government to notify? Or is notification included in the former „royal prerogative“?

Background of the Right to Withdraw

C. The Withdrawal Process (Art. 50 (2)-(4) TEU)

- After notification European Council determines guidelines on the withdrawal.
- Then the Union – the Council and not the Commission – negotiates an exit-agreement with Great Britain.
- This agreement has to be settled within two years after notification. Otherwise withdrawal becomes automatically effective (sunset-clause).
- An extension of the period is possible by unanimous decision of the European Council and Great Britain, but politically unlikely.
- Agreement must account for the framework of future relations of the Union and Great Britain. A pure exit agreement is thus not possible.

Background of the Right to Withdraw

- Politically the Union has a great interest to keep Great Britain closely linked to the Common Market.
- On the other hand a too generous agreement might encourage other Member States to exit.
- Most likely therefore: a lose-lose-agreement.
- Agreement is then concluded by the Council and ratified by the European and the British Parliament (not the Member States).

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D. The Consequences of Withdrawal

- With entry into force of the exit agreement, the treaties no longer apply to Great Britain.
- The same is true for all secondary law of the Union. UK has already announced to at least temporary transform all existing EU-law into British law.
- Whether Single Market Rules continue to apply depends on the arrangements found in the agreement. Currently this is more than open.
- Britain, however, would be free to reapply for membership at any time.