

Theresa May's period of implementation: legal aspects

Third Brexit Lecture/Alexander Thiele

Phase 1 and Phase 2

Phase 1: Citizen's rights, financial burden, UK-Ireland-Border.

Phase 2: Negotiating the future relationship between EU and UK

Problem: Phase 2 will not start before „significant progress“ in phase 1.

Not sure whether phase 2 will start in December 2017

Art. 50 TEU

Article 50

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

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. 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.

(...)

Art. 50 TEU

Exit-Agreement consists of two parts:

1. Unbundling EU and exiting Member State
2. Agreement on the future relationship

Problem: Can EU negotiate anything as regards the second part without having to formally include the Member States?

Art. 3 (1) TFEU

Article 3 1. The Union shall have exclusive competence in the following areas:

- (a) customs union;
- (b) the establishing of the competition rules necessary for the functioning of the internal market;
- (c) monetary policy for the Member States whose currency is the euro;
- (d) the conservation of marine biological resources under the common fisheries policy;
- (e) common commercial policy.

Art. 216 TFEU

Article 216 1.

The Union may conclude an agreement with one or more third countries or international organisations

where the Treaties so provide or

where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or

is provided for in a legally binding Union act or

is likely to affect common rules or alter their scope.

Art. 3 (2) TFEU

- 2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

Art. 50 TEU revisited

Possible solution:

Extension of negotiation period (3 instead of 2 years)

Implementation period (2 years)

Hard brexit

Problem: Fixed Brexit date in Great Repeal Bill

The END! (?)

Thank You for Your Attention!