

## Interpretation and implementation of Article 50 TEU <sup>1</sup> Legal and institutional assessment

### ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, looks into the constitutional and institutional challenges that the European Union faced during the Brexit negotiations, and analyses whether the current wording of Article 50 of the Treaty on European Union was applied in an adequate manner and allowed for an efficient and properly organised withdrawal procedure.

### Background

The effective departure of the United Kingdom from the European Union on 31 January 2020 settled, for some time at least, the troubled relationship between Britain and Europe, 48 years after the country joined the then European Economic Community and three and a half years after the Brexit referendum of 23 June 2016.

This long process marked, also, **the first application of the procedure stipulated in Article 50 of the Treaty on European Union** which affords a legal way for Member States to withdraw the Union. The provision was introduced by the Lisbon Treaty as a means to ensure Member States that they could leave the Union, if they so desired. However, as one thought that it would never be applied, the Article defines a complete process but is, at the same time, succinct: the provision leaves a number of institutional issues unanswered.

Now that the EU and the UK have, in the words of Commission President Ursula von der Leyen after the conclusion of the EU-UK Trade and Cooperation Agreement on 24 December 2020, "*left Brexit behind*" it is time to look at the withdrawal process from a distance in order to determine how the provisions of Article 50 TEU have been interpreted and applied during this process.

**This study examines the constitutional and institutional challenges that arose during Brexit** in relation to the application of Article 50 TEU and **analyses whether its current wording was sufficient and facilitated an efficient and properly organised withdrawal procedure.** The study does not aim to anticipate other

<sup>1</sup> Full study in English: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690964/IPOL\\_STU\(2021\)690964\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690964/IPOL_STU(2021)690964_EN.pdf)



“exits” nor to facilitate or render them more difficult. Rather, it scrutinises the entire process of Brexit and looks into the procedures used during the negotiations in order to determine whether Article 50 TEU allowed for a suitable use of these procedures both internally, among the various EU institutions, and when dealing with the withdrawing Member State.

The period before the triggering of Article 50 TEU raised two main questions related indirectly to Article 50 TEU. Firstly, **the lack of a clear time limit** within which a Member State that wishes to withdraw should formally submit the relevant notification. The UK case showed that the EU has little influence over what is a Member State’s right. The second question concerns **the involvement of the legislative branch** in the formal notification process: the UK case demonstrated the need to clarify the relevant provision of Article 50 TEU on the *“respect of a Member State’s own constitutional requirements”*.

A significant lesson, both institutionally and politically, for the EU was its early decision over the format of the negotiations; the EU stressed its **unity** during the negotiations, avoiding any bilateral talks with the UK, chose **not to open negotiations** before the UK notified its decision to leave the EU and channelled **all discussions** with the UK **through the EU Chief negotiator**.

The start of the negotiations brought into the forefront the issue of **the sequence of the withdrawal negotiations** which should be conducted *“taking account of the framework for [the withdrawing state’s] future relationship with the Union”*. The EU opted for a “phased approach” and insisted on negotiating first on the withdrawal and at a later stage on future trade relations. It remains open to discussion whether this approach is in line with the Article’s intention and whether, in the specific context, another approach would be feasible.

The negotiations also allowed to **clarify** as well as to **shape the role of the various EU institutions** in the withdrawal process. The negotiations confirmed the significant **political role of the European Council** as well as the incontestable **trust in the European Commission** to lead them. The negotiations also allowed **expanding the involvement of the European Parliament** in the relevant debate; Parliament used a novel institutional setup, stressed both its political weight and showed full institutional respect to the unity of the EU. It managed, thus, both to forge for itself a meaningful place in the withdrawal context and to successfully defend its priorities.

The final text of the withdrawal agreement demonstrates the extremely intricate relations that have been established within the EU. Separation has been complex and required meticulous, legal provisions which cannot be thoroughly covered in a Treaty Article; but the text can be seen as a model for any future such agreement and provides for a **comprehensive protection of rights for citizens** affected by the withdrawal and a **complete and clear financial settlement**. It also demonstrates that the governance of the agreement must be tailor-made, in any case, leaving sufficient space for the Union’s autonomy and CJEU involvement.

The process of Brexit demonstrated that Article 50 TEU has broadly achieved its objectives for an orderly withdrawal from the EU, respectful of the institutional balance and the objectives of the Union. It remains up to the EU to consider whether it is expedient or not to look further into the lacunae and omissions that the Article’s use during Brexit showed and review accordingly the Article. To this end, the study concludes with a

**number of relevant recommendations** also in view of **the upcoming Conference on the Future of Europe**. These include:

- The desirability of revisiting the **need to maintain in the Treaties a provision to regulate the withdrawal of a Member State**.
- Following the CJEU judgment on the *Wightman* case, the need to **clarify or set conditions** on the **right to revoke** a withdrawal notification.
- The suitability of a **longer**, or **conditional** to agreement, **negotiation period** in order to allow for a clearer perspective on the future relations.
- Whether it would be appropriate for the EU institutions to consider adopting some form of '**roadmap to separation**', setting, for citizens and Member States, a set of EU principles and priorities for future uses of Article 50 TEU.

**Disclaimer and copyright.** The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy. © European Union, 2021.

External Authors: Ioannis PAPAGEORGIOU, Associate Professor, Aristotle University of Thessaloniki.  
Research Administrator responsible: Eeva PAVY Editorial assistant: Fabienne VAN DER ELST  
Contact: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

This document is available on the internet at: [www.europarl.europa.eu/supporting-analyses](http://www.europarl.europa.eu/supporting-analyses)

PE 690.964  
IP-C-AFCO-IC-2020-13

Print ISBN 978-92-846-7947-8 | doi:10.2861/818535 | QA-08-21-045-EN-C  
PDF ISBN 978-92-846-7951-5 | doi:10.2861/342101 | QA-08-21-045-EN-N