DRAFT REPORT

on the assessment of the implementation of Article 50 TEU (2020/2136(INI))

Committee on Constitutional Affairs

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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

Introduction
Article 50 of the TEU creates a process for leaving the European Union by giving Member States a sovereign right to withdraw. For the European Union, the withdrawal of the United Kingdom was a new process and an unprecedented challenge, in particular due to the impact of the withdrawal on the lives of millions of citizens\(^1\), who exercised their free movement rights under EU law. The implementation of Article 50 of the TEU, which was only introduced by the Treaty of Lisbon, demanded deep reflection on this and other complex issues related to the disentanglement of a Member State from the Union within a limited timeframe.

Article 50 of the TEU solved the pre-existing uncertainty and ambiguity on the right to withdraw from the EU, by explicitly giving Member States a unilateral right to withdraw subject to no conditions apart from the compliance with their own national constitutional requirements. Article 50 of the TEU is, however, silent on many aspects that arose during the process of withdrawal.

This implementation report aims at assessing the way the provisions of Article 50 of the TEU were interpreted and applied, and the way the procedure of withdrawal of the UK from the EU was organised and conducted under those provisions, and also what lessons can be drawn regarding the constitutional order and institutional organisation of the Union.

The process
Article 50 of the TEU does not impose any substantive conditions to the withdrawal apart from the respect of the concerned Member State own constitutional requirements - a decision to withdraw from the Union is unilateral and belongs exclusively to the Member State in question. The decision of the United Kingdom to withdraw from the EU was entirely respected.

All aspects of Article 50 of the TEU interpretation and application were progressively detailed by the EU institutions, and in particular by the European Council through its successive Guidelines\(^2\) for the negotiations.

Objectives and priorities
The aim of the procedure was clearly defined from the outset: an orderly withdrawal on the basis of a phased approach ensuring as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners. Settling the disentanglement of the UK from the Union and from its rights and obligations as a Member State required also a clear definition of a single financial settlement of the obligations resulting from its membership, and addressing the unique circumstances on the island of Ireland, aiming by avoiding a hard border and respecting the integrity of the Union legal order.

Parliament has actively engaged in ensuring institutional cohesion and unity, and in contributing to the definition of the priorities of the negotiations, as the institution

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\(^1\) Over 3 million EU citizens in the UK and more than a million UK nationals in the EU.
representing the citizens of the Union. In this context, the protection of interests of the EU citizens but also of the UK nationals living and working in the EU was Parliament’s key priority.

The reason for the concern of the EU institutions, and of Parliament in particular, was that the status of EU citizen, with the rights associated to such status, stems from the EU legal order. Given the absence of express provisions in this regard in Article 50 of the TEU, the cessation of the application of the Treaties under that legal basis implies the cessation of the status of EU citizens and of the related rights.

The UK’s decision to withdraw had a particular immediate impact on the citizens most directly concerned, as it created a high level of uncertainty regarding their future status. Parliament received a great number of petitions from citizens expressing their serious concerns about the impact of the withdrawal on their rights, including in the area of free movement, and of the exercise of voting and petition rights, among others.

During the preparatory phase of the consent procedure, AFCO had the opportunity to hear from organisations representing the interests of citizens directly impacted by the withdrawal. Those organisations considered that EU citizenship was for the affected citizens the fundamental status, and that this status should be designed to protect them sufficiently. They noted also that one of the most problematic issues for them was the role of the Court of Justice of the European Union (CJEU) in the withdrawal procedure, which they considered essential in order to ensure a consistent interpretation of the rights of citizens.

It was therefore essential to ensure that the safeguard of the rights of citizens was high on the agenda, and that this would be effectively dealt with in the withdrawal arrangements to be negotiated.

The issue of Ireland/Northern Ireland, which is specific to the withdrawal of the United Kingdom, was also an issue of major concern for Parliament, that emphasized the importance of maintaining an open border in the island of Ireland.

The 1998 Good Friday Agreement represented a major development in the Northern Ireland peace process, and EU membership for Ireland and the UK was an essential context for the implementation of that agreement. The uncertainty created by the withdrawal in this regard and the risk of a no-deal withdrawal could jeopardise political stability and the peace process in Northern Ireland. Thus, for the EU, the commitment was clearly that the Good Friday Agreement should be entirely shielded and the peace process should be protected, by ensuring minimal disruption to the economic, political and legal context in Northern Ireland.

**Procedural aspects**

Article 50 of the TEU requires taking account of the framework for the future relationship of the withdrawing Member State with the Union when setting out the arrangements for its withdrawal. An understanding on the framework for the future relationship was identified, as soon as a satisfactory agreement on the arrangements for an orderly withdrawal was deemed achieved. This understanding on the framework for the future relationship took the form of a non-binding political declaration accompanying the Withdrawal Agreement.

The definition of the framework for the future relationship was controversial from the
beginning of the negotiations. The controversy was related initially with the moment in which such definition should occur, and later with the nature and also the content of that framework. These issues were progressively settled by establishing a clear sequencing of negotiations, on the one hand, and through the non-binding nature of the political declaration and the negotiation of its terms, on the other. However, settling these issues was politically costly and time consuming, with a direct impact on the negotiation of the withdrawal arrangements.

Under Article 50 of the TEU, an agreement setting out the withdrawal arrangements is not mandatory. However, the EU has strived to negotiate and conclude the Withdrawal Agreement in view of mitigating the risks and the disruption arising from the withdrawal of the UK to citizens, businesses and the Union itself. The risk of a no-deal withdrawal was nevertheless present until the conclusion of the process, which was moreover characterised by tense and highly politicised negotiations, aggravated by the very limited time available.

Indeed, in line with Article 50(3) of the TEU, which provides for the possibility to extend the period of two years, three extensions were granted under that provision, showing that a two-year period may be too short for concluding an agreement on the withdrawal arrangements.

Article 50 of the TEU does not provide for specific solutions in case of a no-deal and therefore of a disorderly withdrawal.

The Commission has drawn the attention of EU institutions, Member States’ administrations at all levels and all stakeholders to the significant disruptions that a no-deal scenario would imply. In view of mitigating such impact, it has provided guidance on the coordinated preparedness approach to follow, and proposed and adopted unilateral and temporary contingency measures in line with the interests of the EU.

In the context of this exercise, the Commission published hundreds of notices to help stakeholders and authorities to prepare, has proposed legislative acts and adopted non-legislative acts across a number of policy areas.

Further to the extensions under Article 50(3) of the TEU, and although Article 50 of the TEU does not explicitly refer to a transition period, the possibility of transitional arrangements was evoked from an early stage of the procedure, including by Parliament, and in view of providing for bridges towards the foreseeable framework for the future relationship.

However, unlike its status during the extension under Article 50(3) of the TEU, in which the withdrawing State remains a Member State with full rights and obligations as such, with the limitation provided for in Article 50(4) of the TEU, the status of the withdrawing state in the transition period is that of a third country, as it can no longer participate in or nominate or elect members of the EU institutions, nor participate in any of the EU decision-making.

Although Article 50 of the TEU strikes a balance between ensuring a process of withdrawal and safeguarding the necessary flexibility for adaptation to the specific circumstances of the process, a future reform of the Treaty should include a reflection on some of the aspects on which Article 50 of the TEU is silent. These aspects include first and foremost the protection of the rights of citizens, but also others such as:

- Requirements for the extension of the negotiations’ period;
- Terms and conditions for transitional arrangements;
• Clarification on how to determine and take into account the framework for future relations;
• Conditions for the revocation of the notification of the intention to leave;
• Provisions on how to address a withdrawal with no agreement;
• Application of Article 218 (11) of the TFEU in the context of an Article 50 of the TEU procedure, (involvement of the Court of Justice of the European Union).

Institutional aspects and role of the Parliament in the process
The unity and solidarity among the EU institutions and among Member States in the process of and in the preparations for the withdrawal was remarkable and contributed to a large extent to the successful conclusion of the negotiations.

Although not formally involved in the negotiations on the withdrawal under Article 50 of the TEU, Parliament has fully exercised its competences under the Treaties.

Parliament played a strong, active role in the withdrawal process, by establishing from very early on a position on all the procedural and substantial issues, while keeping the closest possible contact with the other institutions and a regular inter-institutional information flow on the progress made in the negotiations.

Parliament’s work was carefully coordinated from the outset by the Conference of Presidents and the Brexit Steering Group (BSG)\(^3\). In more than 100 meetings, most of them in the presence of the EU Chief Negotiator, Michel Barnier, the BSG constituted the forum in which Parliament was kept permanently informed of the progress of negotiations, and also where its positions on the negotiations were prepared.

AFCO, as the committee competent for preparing the consent procedure according to Parliament’s Rules of Procedure, has done a thorough preparatory work, gathering evidence, advice and expertise from varied sectors and stakeholders, through debates and hearings on the implications of the withdrawal of the UK from the Union. Since 3 September 2015, AFCO organised more than 20 events on issues ranging from the renegotiation of the United Kingdom constitutional relationship with the European Union and the agreement reached by the European Council on 18-19 February 2016, to the future constitutional relationship of the UK with the European Union, the citizens’ rights, and the implications of the UK’s withdrawal for the Irish border.

Conclusion
The procedure of withdrawal under Article 50 of the TEU stands at the very confluence of complex legal and political issues and constraints, while also highlighting the unique nature of the EU’s legal order.

Article 50 of the TEU has met its objectives of preserving the sovereign right of a Member

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\(^3\) Initially composed of composed of Guy Verhofstadt, as coordinator, Elmar Brok (EPP, DE), Roberto Gualtieri (S&D, IT), Gabriele Zimmer (GUE/NGL, DE), Philippe Lamberts (Greens/EFA, BE), and Danuta Maria Hübner, as Chair of the Committee on Constitutional Affairs (AFCO) (EPP, PL). After the 2019 European elections, the composition of the BSG changed for the EPP, which became represented by Danuta Maria Hübner, the S&D, which became represented by Pedro Silva Pereira (PT), the GUE/NGL, which became represented by Martin Schirdewan (DE), and AFCO, which became represented by Chair Antonio Tajani (EPP, IT).
State to withdraw from the European Union and of ensuring an orderly withdrawal of the UK from the Union, even though it is silent on some aspects of the procedure. In this regard, the withdrawal process and the implementation of Article 50 of the TEU demonstrated that the principles and values on which the European Union is based are true building blocks of its functioning.

The withdrawal of the United Kingdom remains nevertheless a significant challenge for the Union, and has multiple political and economic consequences, which will surely continue to play out in the future.

The conclusion of the Withdrawal Agreement and the subsequent conclusion of the EU-UK Trade and Cooperation Agreement should not exempt the Union, its institutions and its Member States from a genuine and mature reflection and debate on the reasons for the UK’s withdrawal, and on how to effectively listen and reach out to our citizens and their expectations.
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the assessment of the implementation of Article 50 of the TEU
(2020/2136(INI))

The European Parliament,

– having regard to the Treaty on European Union (TEU), and in particular Article 50 thereof,

– having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 218 thereof,

– having regard to the Charter of Fundamental Rights of the European Union,

– having regard to the notification of 29 March 2017 by the UK to the European Council of its intention to withdraw from the European Union and from the European Atomic Energy Community, pursuant to Article 50(2) of the TEU and to Article 106a of the Treaty establishing the European Atomic Energy Community,

– having regard to the European Council (Art. 50) guidelines of 29 April 2017 following the UK’s notification under Article 50 of the TEU, of 15 December 2017 for the second phase of the Brexit negotiations, and of 23 March 2018 on the framework for the future EU-UK relationship,

– having regard to the Council Decision of 22 May 2017 which lays down the directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union, and to the Council Decision of 29 January 2018 supplementing the Council Decision of 22 May 2017 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out arrangements for its withdrawal from the European Union, setting out supplementary directives for the negotiation,

– having regard to Council Decision (EU, Euratom) 2020/266 of 25 February 2020 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement and the directives set out in the addendum thereto for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland, which have been made public,

– having regard to its resolutions of 5 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union, of 3 October 2017 on the state of play of negotiations with the United Kingdom, of 13 December 2017 on the state of play of negotiations with the United Kingdom, of 14 March 2018 on the framework of the future EU-UK relationship, of 18 September 2019

1 OJ L 58, 27.2.2020, p. 53.
5 OJ C 162, 10.5.2019, p. 40.
on the state of play of the UK’s withdrawal from the European Union\textsuperscript{6}, of 15 January 2020 on implementing and monitoring the provisions on citizens’ rights in the Withdrawal Agreement\textsuperscript{7}, and of 12 February 2020 on the proposed mandate for negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland\textsuperscript{8},

– having regard to its legislative resolution of 29 January 2020 on the draft Council decision on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community\textsuperscript{9},

– having regard to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community\textsuperscript{10} (‘the Withdrawal Agreement’) and to the accompanying political declaration setting out the framework for the future relationship between the European Union and the United Kingdom\textsuperscript{11} (‘the Political Declaration’),

– having regard to its resolution of 18 June 2020 on the negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland\textsuperscript{12},

– having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,

– having regard to the opinion of the Committee on Foreign Affairs,

– having regard to the letter from the Committee on International Trade,

– having regard to the report of the Committee on Constitutional Affairs (A9-0000/2021),

A. whereas Article 50 of the TEU solved the pre-existing uncertainty and ambiguity surrounding the right to withdraw from the EU by explicitly giving Member States the unilateral right to withdraw, subject to no conditions apart from compliance with their own national constitutional requirements;

B. whereas Article 50 of the TEU establishes the only procedure under which a Member State may lawfully withdraw from the EU;

C. whereas Article 50 of the TEU is silent on several aspects of the procedure that arose during the withdrawal of the UK from the Union;

D. whereas the decision to leave the EU resulting from the UK referendum, as expressed by UK citizens in a free and democratic process, was entirely and fully respected in line with

\textsuperscript{6} OJ C 171, 6.5.2021, p. 2.
\textsuperscript{7} Texts adopted, P9_TA(2020)0006.
\textsuperscript{8} Texts adopted, P9_TA(2020)0033.
\textsuperscript{9} Texts adopted, P9_TA(2020)0018.
\textsuperscript{10} OJ L 29, 31.1.2020, p. 7.
\textsuperscript{11} OJ C 34, 31.1.2020, p. 1.
\textsuperscript{12} Texts adopted, P9_TA(2020)0152.
the values of freedom and democracy, as referred to in Article 2 of the TEU;

E. whereas Article 50 of the TEU confers on the Union the exceptional horizontal competence to negotiate an agreement covering all matters necessary to arrange the withdrawal of a Member State;

F. whereas the role of the EU institutions in the withdrawal procedure was key in the interpretation and implementation of the provisions of Article 50 of the TEU, in minimising institutional disruption, safeguarding the unity of Member States and ensuring an orderly withdrawal;

G. whereas under the TEU, citizens are directly represented at Union level in the European Parliament;

H. whereas Parliament has engaged actively and decisively in the withdrawal process since the very beginning, and has committed to protecting the interests of EU citizens and to safeguarding the integrity of the European Union throughout the whole process;

I. whereas the withdrawal process has led to unpredictability and has constituted a challenge not only for the EU and the withdrawing Member State, but also and even more so for the citizens and entities most directly affected;

1. Highlights that the withdrawal of a Member State has been an unprecedented and extremely critical process for the European Union;

2. Recognises but nevertheless considers regrettable the withdrawal of the UK from the European Union;

3. Underlines that the provisions of Article 50 of the TEU and the way in which they were interpreted and implemented reflect the common values that are at the foundation of the Union, in particular freedom, democracy and the rule of law;

4. Believes that Article 50 of the TEU has met its objectives of preserving the sovereign right of a Member State to withdraw from the European Union and of ensuring the orderly withdrawal of the UK from the Union, while allowing for the subsequent building of an enhanced relationship between the EU and the UK as a third country;

5. Considers that the aims of Article 50 of the TEU and the withdrawal negotiations with the UK of ensuring disentanglement from the Union, providing legal stability and minimising disruption, and providing a clear vision of the future for citizens and legal entities, by ensuring an orderly withdrawal, while protecting the integrity and interests of the European Union, its citizens and its Member States, were generally achieved;

6. Considers that the swift and firm identification of the priorities in the context of the withdrawal of the UK from the Union, and in particular, the protection of the rights of the millions of EU citizens in the UK and UK nationals in the EU affected by the withdrawal, the special circumstances confronting the island of Ireland and a single financial settlement were key in structuring the process and stabilising its impact in the Union;

7. Believes that the clear division of tasks among the institutions and the inclusive and
transparent approach adopted by the Commission and its Chief Negotiator were paramount in maintaining unity within the EU and in promoting the EU’s priorities and interests in the negotiations;

8. Believes, nevertheless, that the withdrawal process was characterised by hesitancy on the part of the UK, leading to protracted uncertainty from the outset, reflected in the time gap between the referendum and the withdrawal notification under Article 50 of the TEU, and until the end of the negotiations, due to the spectre of a no-deal withdrawal;

9. Considers, in this regard, that the political and economic consequences of the decision to leave the Union are significant; believes that these were not genuinely and fully assessed by the UK prior to its decision to withdraw, resulting in a lack of preparation for the procedure;

10. Believes that although the withdrawal is not conditional upon an agreement between the withdrawing Member State and the Union, the process of the withdrawal of the UK shows the importance of concluding an agreement on the withdrawal arrangements; considers that the EU institutions did their utmost and accomplished their obligation to ensure the conclusion of an agreement; commends the efforts made to avoid a no-deal scenario;

11. Considers that Article 50 of the TEU strikes a balance between ensuring a withdrawal process and safeguarding the flexibility necessary for adaptation to the specific circumstances; believes, however, that, in the framework of a future reform of the Treaty, the opportunity of remedying some of the loopholes identified in Article 50 of the TEU could be assessed, with particular regard to the following:

- delimited requirements for the extension of the period of two years set out under Article 50(3) of the TEU,
- a legal basis and strict conditions for transitional arrangements,
- explicit conditions for the revocation of the notification of the intention to leave,
- clarification of the application of the provisions of Article 218 of the TFEU, notably on the role of the Court of Justice of the European Union in the procedure;

12. Believes, furthermore, that the withdrawal provisions of the Treaty should, as much as possible, ensure legal certainty for the EU citizens affected by the withdrawal, setting out minimum standards for the protection of their rights;

13. Believes that the EU institutions and the Member States have collectively been responsive and have followed a coherent and unified approach, providing for a timely, clear and well-structured definition of the aspects of the withdrawal process, including those which are not explicitly specified in Article 50 of the TEU, in particular the objectives and general principles of the negotiations, the EU’s competences for issues related to the withdrawal, the sequencing of negotiations, the scope of the Withdrawal Agreement, the transitional arrangements, and the framework of the future relationship;

14. Is of the view that the European Council played an aggregating and stabilising role in the process, including through its guidelines under Article 50(2) of the TEU, by interpreting and applying the provisions of Article 50 of the TEU, including in relation to the
elements about which the provisions are silent, and setting a clear political direction in line with the interests of the Union in the definition of the negotiation terms and in nominating the Commission as the Union’s negotiator;

15. Reiterates that, until a withdrawal agreement enters into force or, failing that, the two-year period mentioned in Article 50(3) of the TEU has elapsed, the withdrawing State remains a Member State, and enjoys all the rights and is under all the obligations deriving from the Treaties without exception, including the principle of sincere cooperation laid down in Article 4(3) of the TEU, as well as the obligation to hold elections to the European Parliament;

16. Emphasises that the role of political oversight of the European Parliament is indispensable in a parliamentary democratic system; insists, in this regard, that no procedural constraints or political objectives should override or limit in time or scope the parliamentary scrutiny phase as regards any international agreements, and in particular, those concluded in the context of a withdrawal from the European Union;

17. Considers, in this context, that the role of the Parliament is essential in safeguarding the parliamentary and democratic dimension of a procedure with such a constitutional and institutional impact on the Union; considers that its role must be enhanced in any future Treaty reform, in all aspects of the process from the negotiations to the implementation of a withdrawal agreement, including for major decisions such as extensions in accordance with Article 50(3) of the TEU;

18. Considers that Article 50 of the TEU addresses and solves the procedural aspect of a Member State’s withdrawal, but does not solve the significant political and economic consequences and disruptive effects of the withdrawal of a Member State from the EU;

19. Reiterates its call for an in-depth reflection on the withdrawal of the UK from the European Union, and on its impact on the future of the EU; believes that such a reflection should ensure an open and broadened dialogue on the reforms that the Union needs in order to reinforce democracy and the capacity to deliver on citizens needs and expectations;

20. Believes that it is the responsibility and role of the Union and its Member States to prevent the repetition of a withdrawal from the EU; calls on Member States to consistently provide wide-reaching information to EU citizens on the functioning of the European Union, its areas of action and its decision-making processes; considers that for this purpose the Conference on the Future of Europe offers an opportunity for enhanced dialogue with citizens and civil society on the European Union and how it should evolve;

21. Instructs its President to forward this resolution to the Council, the Commission, and the governments and parliaments of the Member States.