

# Document 62018CJ0621

## Title and reference

Judgment of the Court (Full Court) of 10 December 2018.

Andy Wightman and Others v Secretary of State for Exiting the European Union.

Reference for a preliminary ruling — Article 50 TEU — Notification by a Member State of its intention to withdraw from the European Union — Consequences of the notification — Right of unilateral revocation of the notification — Conditions.

Case C-621/18.

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## Text

### JUDGMENT OF THE COURT (Full Court)

10 December 2018 (\*)

(Reference for a preliminary ruling — Article 50 TEU — Notification by a Member State of its intention to withdraw from the European Union — Consequences of the notification — Right of unilateral revocation of the notification — Conditions)

In Case C-621/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Session, Inner House, First Division (Scotland, United Kingdom), made by decision of 3 October 2018, received at the Court on the same day, in the proceedings

**Andy Wightman,**

**Ross Greer,**

**Alyn Smith,**

**David Martin,**

**Catherine Stihler,**

**Jolyon Maugham,**

**Joanna Cherry**

v

**Secretary of State for Exiting the European Union,**

interveners:

**Chris Leslie,**

**Tom Brake,**

THE COURT (Full Court),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, M. Vilaras, E. Regan, T. von Danwitz, C. Toader, F. Biltgen, K. Jürimäe and C. Lycourgos, Presidents of Chambers, A. Rosas, E. Juhász, M. Ilešič, J. Malenovský, L. Bay Larsen, M. Safjan, D. Šváby, C.G. Fernlund (Rapporteur), C. Vajda, S. Rodin, P.G. Xuereb, N. Piçarra, and L.S. Rossi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 November 2018,

after considering the observations submitted on behalf of:

- Andy Wightman, Ross Greer, Alyn Smith, David Martin, Catherine Stihler, Jolyon Maugham and Joanna Cherry, by A. O'Neill QC, M. Lester QC, D. Welsh, Advocate, P. Eeckhout, Professor of Law, and E. Motion, Solicitor,
- Chris Leslie and Tom Brake, by M. Ross QC, G. Facenna QC, A. Howard, Barrister, S. Donnelly, Advocate, J. Jack and J. Halford, Solicitors,
- the United Kingdom Government, by S. Brandon and C. Brodie, acting as Agents, and by the R<sup>t</sup> Hon Lord Keen of Elie QC, and T. de la Mare QC,
- the Council of the European Union, by H. Legal, J.-B. Laignelot and J. Ciantar, acting as Agents,
- the European Commission, by L. Romero Requena, F. Erlbacher and K. Banks, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 December 2018,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 50 TEU.
- 2 The request has been made in proceedings between Andy Wightman MSP, Ross Greer MSP, Alyn Smith MEP, David Martin MEP, Catherine Stihler MEP, Jolyon Maugham, and Joanna Cherry MP, on the one hand, and the Secretary of State for

Exiting the European Union (United Kingdom), on the other, concerning the possibility of unilaterally revoking the notification of the intention of the United Kingdom of Great Britain and Northern Ireland to withdraw from the European Union.

## Legal context

### *International law*

- 3 The Vienna Convention on the Law of Treaties, of 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331), provides, in Articles 65, 67 and 68 thereof:

‘Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in Article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

...

Article 67. Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under Article 65, paragraph 1 must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of Article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 68. Revocation of notifications and instruments provided for in Articles 65 and 67

A notification or instrument provided for in Article 65 or 67 may be revoked at any time before it takes effect.’

### *European Union law*

4 According to the second subparagraph of Article 1 TEU, that treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

5 Article 2 TEU provides:

‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’

6 Under Article 50 TEU:

‘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) [TFEU]. 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.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) [TFEU].

5. 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.’

### ***United Kingdom law***

7 The European Union (Notification of Withdrawal) Act 2017 provides:

‘...

1 Power to notify withdrawal from the [European Union]

(1) The Prime Minister may notify, under Article 50(2) [TEU], the United Kingdom’s intention to withdraw from the [European Union].

(2) This section has effect despite any provision made by or under the European Communities Act 1972 or any other enactment.’

8 Section 13 of the European Union (Withdrawal) Act 2018, enacted on 26 June 2018, provides:

- (1) The withdrawal agreement may be ratified only if—
- (a) a Minister of the Crown has laid before each House of Parliament—
    - (i) a statement that political agreement has been reached,
    - (ii) a copy of the negotiated withdrawal agreement, and
    - (iii) a copy of the framework for the future relationship,
  - (b) the negotiated withdrawal agreement and the framework for the future relationship have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown,
  - (c) a motion for the House of Lords to take note of the negotiated withdrawal agreement and the framework for the future relationship has been tabled in the House of Lords by a Minister of the Crown and—
    - (i) the House of Lords has debated the motion, or
    - (ii) the House of Lords has not concluded a debate on the motion before the end of the period of five Lords sitting days beginning with the first Lords sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (b), and
  - (d) an Act of Parliament has been passed which contains provision for the implementation of the withdrawal agreement.
- (2) So far as practicable, a Minister of the Crown must make arrangements for the motion mentioned in subsection (1)(b) to be debated and voted on by the House of Commons before the European Parliament decides whether it consents to the withdrawal agreement being concluded on behalf of the [European Union] in accordance with Article 50(2) [TEU].

...'

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

9 On 23 June 2016, a referendum of the United Kingdom electorate produced a majority in favour of that Member State's leaving the European Union. On 29 March 2017, having been authorised to do so by the European Union (Notification of Withdrawal) Act 2017, the Prime Minister (United Kingdom) notified the European Council of the United Kingdom's intention to withdraw from the European Union under Article 50 TEU.

10 On 19 December 2017, a petition for judicial review was lodged in the Court of Session (Scotland, United Kingdom), in which the petitioners in the main proceedings — including one member of the Parliament of the United Kingdom of Great Britain and Northern Ireland, two members of the Scottish Parliament, and three members of the European Parliament — seek a declarator specifying whether,

when and how that notification can unilaterally be revoked. Those petitioners, in support of whom two other Members of the United Kingdom Parliament intervened, wish to know whether the notification referred to in Article 50 TEU can unilaterally be revoked before the expiry of the two-year period laid down in that article, with the effect that, if the notification made by the United Kingdom were revoked, that Member State would remain in the European Union. They asked the Court of Session (Scotland) to refer a question on that issue to the Court of Justice for a preliminary ruling. In response, the Secretary of State for Exiting the European Union argued that the question was hypothetical and academic, in view of the United Kingdom Government's stated position that the notification would not be revoked.

- 11 By decision of 8 June 2018, the Lord Ordinary (first instance judge of the Court of Session) declined to make a reference to the Court of Justice and refused the petition for judicial review on the grounds, first, that the issue was hypothetical in view of the United Kingdom Government's position and because the facts upon which the Court would be asked to give an answer could not be ascertained and, secondly, that the matter encroached upon parliamentary sovereignty and was outwith the national court's jurisdiction.
- 12 The petitioners in the main proceedings brought an appeal against that decision before the referring court.
- 13 The referring court points out that, under section 13 of the European Union (Withdrawal) Act 2018, the approval of the United Kingdom Parliament must be obtained on the outcome of negotiations between the United Kingdom and the European Union under Article 50 TEU. In particular, the withdrawal agreement can be ratified only if it, and the framework for the future relationship between the United Kingdom and European Union, have been approved by a resolution of the House of Commons and been debated in the House of Lords. If no such approval is forthcoming, the United Kingdom Government must state how it proposes to proceed. If the Prime Minister states, prior to 21 January 2019, that no agreement in principle can be reached, that government must, once again, state how it proposes to proceed and must bring that proposal before both Houses of the United Kingdom Parliament.
- 14 The referring court states that if any agreement between the United Kingdom and the European Union is not approved, and nothing further occurs, the treaties will cease to apply to the United Kingdom on 29 March 2019 and that Member State will automatically leave the European Union on that date.
- 15 By order of 21 September 2018, the referring court allowed the appeal against the decision of the Lord Ordinary and granted the request of the petitioners in the main proceedings that a reference for a preliminary ruling be made under Article 267 TFEU. The referring court considers that it is neither academic nor premature to ask the Court of Justice whether it is legally possible, for a Member State, to revoke unilaterally the notification made under Article 50(2) TEU and to remain in the European Union. It considers that the matter is uncertain and that the answer given by the Court of Justice will have the effect of clarifying the options open to the Members of the House of Commons when they cast their votes on any agreement between the United Kingdom and the European Union. In particular, that answer would allow them to ascertain whether there are not two options, but three, namely withdrawal from the European Union without an agreement, withdrawal from the

European Union with the agreement that has been laid before them, or revocation of the notification of the intention to withdraw and the United Kingdom's remaining in the European Union.

- 16 In those circumstances the Court of Session, Inner House, First Division (Scotland), decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Where, in accordance with Article 50 [TEU], a Member State has notified the European Council of its intention to withdraw from the European Union, does EU law permit that notice to be revoked unilaterally by the notifying Member State; and, if so, subject to what conditions and with what effect relative to the Member State remaining within the European Union?'

- 17 The United Kingdom Government made an application to the referring court for permission to appeal the order of 21 September 2018, referred to in paragraph 15 of the present judgment, and the order of 3 October 2018 by which the referring court submitted this reference for a preliminary ruling. That application was refused by decision of 8 November 2018, and the United Kingdom Government then applied to the Supreme Court of the United Kingdom for permission to appeal against those two orders. That permission was refused by order of the Supreme Court of the United Kingdom of 20 November 2018.

#### **Procedure before the Court of Justice**

- 18 The referring court requested that the reference for a preliminary ruling be determined pursuant to the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court.
- 19 By order of 19 October 2018, *Wightman and Others* (C-621/18, EU:C:2018:851), the President of the Court granted that request.

#### **Consideration of the question referred**

##### ***Admissibility***

- 20 The United Kingdom Government argues that the question referred is inadmissible because it is hypothetical. In particular, the United Kingdom Government submits that no draft act of revocation of the notification of the United Kingdom's intention to withdraw from the European Union has been adopted or even contemplated, that there is no dispute in the main proceedings and that the question referred is actually intended to obtain an advisory opinion on a constitutional issue, namely the correct interpretation of Article 50 TEU and of acts adopted pursuant to that article.
- 21 According to the United Kingdom Government, there is no concrete dispute, since the question referred addresses events that have not occurred and may not occur. The United Kingdom Government submits that it has consistently reiterated its intention to honour the result of the referendum by giving notice under Article 50 TEU and thereby withdrawing from the European Union, whether on the basis of an agreement or without any agreement.

- 22 The question, according to the United Kingdom Government, actually concerns the legal implications of a situation that does not currently exist. It is based on the assumption, first, that there will be an attempt by the United Kingdom, whether at the instigation of its Parliament or otherwise, to revoke the notification and, secondly, that the European Commission or the other 27 Member States will oppose that revocation. Only in the event of such opposition would a dispute arise.
- 23 According to the United Kingdom Government, the lodging of the petition in the main proceedings accompanied by a request that a question be referred for a preliminary ruling in order to obtain an advisory opinion from the Court circumvents the rules of the TFEU on remedies, standing and time limits. That government submits that the advisory opinion procedure is subject to the rules set out in Article 218(11) TFEU and is available only where a question arises as to the compatibility of a proposed international agreement with the Treaties.
- 24 The only possible remedies would be direct actions, if the United Kingdom were to revoke its notification and trigger a dispute with the other Member States and the EU institutions.
- 25 The Commission also argues that the ruling that the referring court will deliver after receiving the Court's answer to the question referred will not produce any binding effects on the parties to the main proceedings and that that question is therefore hypothetical. It acknowledged however, at the hearing, that there is a dispute in the main proceedings.
- 26 In that regard, it should be borne in mind that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 24, and of 7 February 2018, *American Express*, C-304/16, EU:C:2018:66, paragraph 31).
- 27 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 25, and of 7 February 2018, *American Express*, C-304/16, EU:C:2018:66, paragraph 32).
- 28 It should also be borne in mind that, in accordance with settled case-law, the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 194 and the case-law cited; see, also, to that effect, judgments of 16 December 1981, *Foglia*, 244/80, EU:C:1981:302, paragraph 18, and of 12 June 2008, *Gourmet Classic*, C-458/06, EU:C:2008:338, paragraph 26).



- 29 In the present case, it must be noted that an appeal has been brought before the referring court against a decision of the first instance court delivered in the context of an action seeking a declarator specifying whether the notification of the United Kingdom's intention to withdraw from the European Union, given under Article 50 TEU, may be unilaterally revoked before the expiry of the two-year period laid down in that article, with the effect that, if the notification made by the United Kingdom were revoked, that Member State would remain in the European Union. The referring court states, in that respect, that it is required to rule on that question of law, which represents a genuine and live issue, of considerable practical importance, and which has given rise to a dispute. That court emphasises that one of the petitioners and the two interveners, who are Members of the United Kingdom Parliament, must vote on the withdrawal of the United Kingdom from the European Union and, in particular, in accordance with section 13 of the European Union (Withdrawal) Act 2018, on the ratification of the agreement negotiated between the United Kingdom Government and the European Union pursuant to Article 50 TEU. The referring court states that those Members of the United Kingdom Parliament have an interest in the answer to that question of law, since that answer will clarify the options open to them in exercising their parliamentary mandates.
- 30 It is not for the Court to call into question the referring court's assessment of the admissibility of the action in the main proceedings, which falls, in the context of the preliminary ruling proceedings, within the jurisdiction of the national court; nor is it for the Court to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and legal proceedings (see, to that effect, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 26, and of 7 February 2018, *American Express*, C-304/16, EU:C:2018:66, paragraph 34). In the present case, the referring court rejected the pleas of inadmissibility raised before it by the United Kingdom Government concerning the hypothetical or academic nature of the action in the main proceedings. It follows that, in so far as the arguments of the United Kingdom Government and of the Commission are intended to call into question the admissibility of that action, they are irrelevant for the purposes of determining whether the request for a preliminary ruling is admissible (see, to that effect, judgment of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 33).
- 31 In addition, the fact that the action in the main proceedings seeks a declaratory remedy does not prevent the Court from ruling on a question referred for a preliminary ruling, provided that the action is permitted under national law and that the question meets an objective need for the purpose of settling the dispute properly brought before the referring court (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 65, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400 paragraph 28).
- 32 Accordingly, there is indeed a dispute before the referring court, even though the respondent in the main proceedings chose not to address the substance of the issue raised by the petitioners in the main proceedings, maintaining only that the petitioners' action was inadmissible (see, to that effect, judgment of 8 July 2010, *Afton Chemical*, C-343/09, EU:C:2010:419, paragraphs 11 and 15).
- 33 There is no doubt as to the relevance of the question referred, since it concerns the interpretation of a provision of EU law — primary law, in this case — and that question is precisely the point at issue in the dispute in the main proceedings.

- 34 Accordingly, it is in no way obvious that the question referred, regarding the interpretation of Article 50 TEU, bears no relation to the actual facts of the main action or its purpose, or concerns a hypothetical problem.
- 35 As regards the argument, mentioned in paragraph 23 of the present judgment, that the referring court seeks to obtain an advisory opinion from the Court, circumventing the procedure set out in Article 218(11) TFEU, it should be noted that the referring court does not ask the Court for an opinion on the compatibility of an agreement envisaged by the European Union with the Treaties, but rather asks the Court to interpret a provision of EU law in order to enable it to give judgment in the main proceedings.
- 36 It follows that the question referred is admissible.

### **Substance**

- 37 The petitioners and the interveners in the main proceedings, while acknowledging that Article 50 TEU does not contain any express rule on the revocation of a notification of the intention to withdraw from the European Union, submit that a right of revocation exists and is unilateral in nature. However, that right may only be exercised in accordance with the constitutional requirements of the Member State concerned, by analogy with the right of withdrawal itself, laid down in Article 50(1) TEU. According to those parties to the main proceedings, the withdrawal procedure therefore continues for as long as the Member State concerned intends to withdraw from the European Union, but comes to an end if, before the end of the period laid down in Article 50(3) TEU, that Member State changes its mind and decides not to withdraw from the European Union.
- 38 The Council and the Commission, while agreeing that a Member State is entitled to revoke the notification of its intention to withdraw before the Treaties have ceased to apply to that Member State, dispute the unilateral nature of that right.
- 39 According to those institutions, the recognition of a right of unilateral revocation would allow a Member State that has notified its intention to withdraw to circumvent the rules set out in Article 50(2) and (3) TEU, which are intended to ensure an orderly withdrawal from the European Union, and would open the way for abuse by the Member State concerned to the detriment of the European Union and its institutions.
- 40 The Council and the Commission argue that the Member State concerned could thus use its right of revocation shortly before the end of the period laid down in Article 50(3) TEU and notify a new intention to withdraw immediately after that period expired, thereby triggering a new two-year negotiation period. By doing so, the Member State would enjoy, de facto, a right to negotiate its withdrawal without any time limit, rendering the period laid down in Article 50(3) TEU ineffective.
- 41 In addition, according to those institutions, a Member State could at any time use its right of revocation as leverage in negotiations. If the terms of the withdrawal agreement did not suit that Member State, it could threaten to revoke its notification and thus put pressure on the EU institutions in order to alter the terms of the agreement to its own advantage.
- 42 In order to guard against such risks, the Council and the Commission propose that Article 50 TEU should be interpreted as allowing revocation, but only with the

unanimous consent of the European Council.

- 43 The United Kingdom Government has not taken a position on the right, for a Member State that has notified its intention to withdraw from the European Union under Article 50 TEU, to revoke that notification.
- 44 In that respect, it must be borne in mind that the founding Treaties, which constitute the basic constitutional charter of the European Union (judgment of 23 April 1986, *Les Verts v Parliament*, 294/83, EU:C:1986:166, paragraph 23), established, unlike ordinary international treaties, a new legal order, possessing its own institutions, for the benefit of which the Member States thereof have limited their sovereign rights, in ever wider fields, and the subjects of which comprise not only those States but also their nationals (Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 157 and the case-law cited).
- 45 According to settled case-law of the Court, that autonomy of EU law with respect both to the law of the Member States and to international law is justified by the essential characteristics of the European Union and its law, relating in particular to the constitutional structure of the European Union and the very nature of that law. EU law is characterised by the fact that it stems from an independent source of law, namely the Treaties, by its primacy over the laws of the Member States, and by the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves. Those characteristics have given rise to a structured network of principles, rules and mutually interdependent legal relations binding the European Union and its Member States reciprocally as well as binding its Member States to each other (judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 33 and the case-law cited).
- 46 The question referred must therefore be examined in the light of the Treaties taken as a whole.
- 47 In that respect, it should be borne in mind that, according to settled case-law of the Court, the interpretation of a provision of EU law requires that account be taken not only of its wording and the objectives it pursues, but also of its context and the provisions of EU law as a whole. The origins of a provision of EU law may also provide information relevant to its interpretation (see, to that effect, judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 135; judgments of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 50 and the case-law cited, and of 17 March 2016, *Parliament v Commission*, C-286/14, EU:C:2016:183, paragraph 43).
- 48 As regards the wording of Article 50 TEU, it should be noted that that article does not explicitly address the subject of revocation. It neither expressly prohibits nor expressly authorises revocation.
- 49 That being said, as the Advocate General pointed out in points 99 to 102 of his Opinion, it follows from the wording of Article 50(2) TEU that a Member State which decides to withdraw is to notify the European Council of its 'intention'. An intention is, by its nature, neither definitive nor irrevocable.
- 50 In addition, Article 50(1) TEU provides that any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements. It follows that the Member State is not required to take its decision in

concert with the other Member States or with the EU institutions. The decision to withdraw is for that Member State alone to take, in accordance with its constitutional requirements, and therefore depends solely on its sovereign choice.

- 51 Article 50(2) and (3) TEU then set out the procedure to be followed if a Member State decides to withdraw. As the Court held in the judgment of 19 September 2018, *RO* (C-327/18 PPU, EU:C:2018:733, paragraph 46), that procedure consists of, first, notification to the European Council of the intention to withdraw, secondly, negotiation and conclusion of an agreement setting out the arrangements for withdrawal, taking into account the future relationship between the State concerned and the European Union and, thirdly, the actual withdrawal from the Union on the date of entry into force of that agreement or, failing that, two years after the notification given to the European Council, unless the latter, in agreement with the Member State concerned, unanimously decides to extend that period.
- 52 Article 50(2) TEU refers to Article 218(3) TFEU, according to which the Commission is to submit recommendations to the Council, which is to adopt a decision authorising the opening of negotiations and nominating the European Union negotiator or the head of the European Union's negotiating team.
- 53 Article 50(2) TEU thus defines the role of the various institutions in the procedure to be followed in order to negotiate and conclude the withdrawal agreement, the conclusion of which requires a decision of the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
- 54 In addition, Article 50(3) TEU determines when the withdrawal of the Member State concerned from the European Union will take effect, in providing that the Treaties are to cease to apply to that Member State from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification by that Member State of its intention to withdraw. That maximum period of two years applies unless the European Council decides, unanimously and in agreement with the Member State concerned, to extend it.
- 55 After its withdrawal from the European Union, the Member State concerned may ask to rejoin, under the procedure set out in Article 49 TEU.
- 56 It follows that Article 50 TEU pursues two objectives, namely, first, enshrining the sovereign right of a Member State to withdraw from the European Union and, secondly, establishing a procedure to enable such a withdrawal to take place in an orderly fashion.
- 57 As the Advocate General stated in points 94 and 95 of his Opinion, the sovereign nature of the right of withdrawal enshrined in Article 50(1) TEU supports the conclusion that the Member State concerned has a right to revoke the notification of its intention to withdraw from the European Union, for as long as a withdrawal agreement concluded between the European Union and that Member State has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that provision, has not expired.
- 58 In the absence of an express provision governing revocation of the notification of the intention to withdraw, that revocation is subject to the rules laid down in Article 50(1) TEU for the withdrawal itself, with the result that it may be decided

upon unilaterally, in accordance with the constitutional requirements of the Member State concerned.

- 59 The revocation by a Member State of the notification of its intention to withdraw, before the occurrence of one of the events referred to in paragraph 57 of the present judgment, reflects a sovereign decision by that State to retain its status as a Member State of the European Union, a status which is not suspended or altered by that notification (see, to that effect, judgment of 19 September 2018, *RO*, C-327/18 PPU, EU:C:2018:733, paragraph 45), subject only to the provisions of Article 50(4) TEU.
- 60 That revocation is fundamentally different in that respect from any request by which the Member State concerned might ask the European Council to extend the two-year period referred to in Article 50(3) TEU; the analogy that the Commission and the Council seek to make between that revocation and such an extension request cannot therefore be accepted.
- 61 As regards the context of Article 50 TEU, reference must be made to the 13th recital in the preamble to the TEU, the first recital in the preamble to the TFEU and Article 1 TEU, which indicate that those treaties have as their purpose the creation of an ever closer union among the peoples of Europe, and to the second recital in the preamble to the TFEU, from which it follows that the European Union aims to eliminate the barriers which divide Europe.
- 62 It is also appropriate to underline the importance of the values of liberty and democracy, referred to in the second and fourth recitals of the preamble to the TEU, which are among the common values referred to in Article 2 of that Treaty and in the preamble to the Charter of Fundamental Rights of the European Union, and which thus form part of the very foundations of the European Union legal order (see, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 303 and 304).
- 63 As is apparent from Article 49 TEU, which provides the possibility for any European State to apply to become a member of the European Union and to which Article 50 TEU, on the right of withdrawal, is the counterpart, the European Union is composed of States which have freely and voluntarily committed themselves to those values, and EU law is thus based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that those Member States share with it, those same values (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 35).
- 64 It must also be noted that, since citizenship of the Union is intended to be the fundamental status of nationals of the Member States (see, to that effect, judgments of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 31; of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraph 25; and of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 43), any withdrawal of a Member State from the European Union is liable to have a considerable impact on the rights of all Union citizens, including, inter alia, their right to free movement, as regards both nationals of the Member State concerned and nationals of other Member States.

- 65 In those circumstances, given that a State cannot be forced to accede to the European Union against its will, neither can it be forced to withdraw from the European Union against its will.
- 66 However, if the notification of the intention to withdraw were to lead inevitably to the withdrawal of the Member State concerned from the European Union at the end of the period laid down in Article 50(3) TEU, that Member State could be forced to leave the European Union despite its wish — as expressed through its democratic process in accordance with its constitutional requirements — to reverse its decision to withdraw and, accordingly, to remain a Member of the European Union.
- 67 Such a result would be inconsistent with the aims and values referred to in paragraphs 61 and 62 of the present judgment. In particular, it would be inconsistent with the Treaties' purpose of creating an ever closer union among the peoples of Europe to force the withdrawal of a Member State which, having notified its intention to withdraw from the European Union in accordance with its constitutional requirements and following a democratic process, decides to revoke the notification of that intention through a democratic process.
- 68 The origins of Article 50 TEU also support an interpretation of that provision as meaning that a Member State is entitled to revoke unilaterally the notification of its intention to withdraw from the European Union. That article largely adopts the wording of a withdrawal clause first set out in the draft Treaty establishing a Constitution for Europe. Although, during the drafting of that clause, amendments had been proposed to allow the expulsion of a Member State, to avoid the risk of abuse during the withdrawal procedure or to make the withdrawal decision more difficult, those amendments were all rejected on the ground, expressly set out in the comments on the draft, that the voluntary and unilateral nature of the withdrawal decision should be ensured.
- 69 It follows from the foregoing that the notification by a Member State of its intention to withdraw does not lead inevitably to the withdrawal of that Member State from the European Union. On the contrary, a Member State that has reversed its decision to withdraw from the European Union is entitled to revoke that notification for as long as a withdrawal agreement concluded between that Member State and the European Union has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that provision, has not expired.
- 70 That conclusion is corroborated by the provisions of the Vienna Convention on the Law of Treaties, which was taken into account in the preparatory work for the Treaty establishing a Constitution for Europe.
- 71 In the event that a treaty authorises withdrawal under its provisions, Article 68 of that convention specifies *inter alia*, in clear and unconditional terms, that a notification of withdrawal, as provided for in Article 65 or 67 thereof, may be revoked at any time before it takes effect.
- 72 As regards the proposal of the Council and the Commission that the right of the Member State concerned to revoke the notification of its intention to withdraw should be subject to the unanimous approval of the European Council, that requirement would transform a unilateral sovereign right into a conditional right subject to an approval procedure. Such an approval procedure would be incompatible with the

principle, referred to in paragraphs 65, 67 and 69 of the present judgment, that a Member State cannot be forced to leave the European Union against its will.

73 It follows, in the first place, that, for as long as a withdrawal agreement concluded between the European Union and that Member State has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that provision, has not expired, that Member State — which enjoys, subject to Article 50(4) TEU, all of the rights and remains bound by all of the obligations laid down in the Treaties — retains the ability to revoke unilaterally the notification of its intention to withdraw from the European Union, in accordance with its constitutional requirements.

74 In the second place, the revocation of the notification of the intention to withdraw must, first, be submitted in writing to the European Council and, secondly, be unequivocal and unconditional, that is to say that the purpose of that revocation is to confirm the EU membership of the Member State concerned under terms that are unchanged as regards its status as a Member State, and that revocation brings the withdrawal procedure to an end.

75 In view of all the foregoing, the answer to the question referred is that Article 50 TEU must be interpreted as meaning that, where a Member State has notified the European Council, in accordance with that article, of its intention to withdraw from the European Union, that article allows that Member State — for as long as a withdrawal agreement concluded between that Member State and the European Union has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that paragraph, has not expired — to revoke that notification unilaterally, in an unequivocal and unconditional manner, by a notice addressed to the European Council in writing, after the Member State concerned has taken the revocation decision in accordance with its constitutional requirements. The purpose of that revocation is to confirm the EU membership of the Member State concerned under terms that are unchanged as regards its status as a Member State, and that revocation brings the withdrawal procedure to an end.

### Costs

76 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Full Court) hereby rules:

**Article 50 TEU must be interpreted as meaning that, where a Member State has notified the European Council, in accordance with that article, of its intention to withdraw from the European Union, that article allows that Member State — for as long as a withdrawal agreement concluded between that Member State and the European Union has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that paragraph, has not expired — to revoke that notification unilaterally, in an unequivocal and unconditional manner, by a notice addressed to the**

**European Council in writing, after the Member State concerned has taken the revocation decision in accordance with its constitutional requirements. The purpose of that revocation is to confirm the EU membership of the Member State concerned under terms that are unchanged as regards its status as a Member State, and that revocation brings the withdrawal procedure to an end.**

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RodinXuerebPiçarra

Rossi

Delivered in open court in Luxembourg on 10 December 2018.

A. Calot Escobar

K. Lenaerts

Registrar

President

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\* Language of the case: English.

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