

# Court of Justice says UK's Article 50 notice of intention to leave EU can be unilaterally revoked (Wightman and Others v Secretary of State for Exiting the European Union)

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**Public Law analysis:** The issue in the case is whether a Member State that has notified the EU of its intention to withdraw from the EU under Article 50 of the Treaty on the European Union (TEU) can change its mind and unilaterally revoke that notification of intention if it chooses to remain in the EU during the period of negotiation. The full Court of Justice has said that Article 50 may be unilaterally revoked by the Member State, without having to have the consent of the other Member States. Written by Maya Lester QC, barrister at Brick Court Chambers, who acted for the petitioners (Wightman and others).

*Wightman and Others v Secretary of State for Exiting the European Union*—Case [C-621/18](#)

## What are the practical implications of this case?

The case could have significant practical consequences for Brexit, and of course any other potential withdrawal of a Member State from the EU in the future. In a Brexit context, Members of Parliament who will vote on whether or not to accept the Withdrawal Agreement will now know that the United Kingdom can revoke its notification of intention to withdraw from the EU, without having to seek the agreement of the other Member States in the Council. As the court said, this means there are 'not two options, but three'—a no-deal Brexit, a withdrawal agreement, or a decision to remain in the EU. As Advocate General Campos Sánchez-Bordona put it (the court agreed with his opinion), a decision by the UK to remain in the EU 'in the face of an unsatisfactory Brexit' will be a valid option in EU law.

## What was the background?

The UK notified the European Council of its intention to withdraw from the EU on 29 March 2017, triggering a two-year period for the UK and EU to negotiate a 'withdraw agreement' on the terms of Brexit. A judicial review was brought in the Court of Session in December 2018 by members of the Scottish, UK and European Parliaments, seeking clarification as to whether notification of the UK's intention to withdraw could be revoked unilaterally, in order to enable them to cast their legislative votes in on the withdrawal agreement in an informed way. The Scottish Court of Session asked the Court of Justice to interpret [Article 50](#) of the TEU in order to enable the Court of Session to resolve the dispute before it. The question it asked the Court of Justice was the following:

'Where, in accordance with [Article 50](#) of the Treaty on European Union, 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?'

## What did the court decide?

The full Court of Justice has held (in a very expedited judgment) that when a Member State has notified the Council of its intention to withdraw from the EU, [Article 50](#) TEU allows the unilateral revocation of that notification.

The court said that [Article 50](#) TEU enshrines the sovereign right of a Member State to decide, democratically and in accordance with its constitutional requirements, whether to withdraw from the EU or to retain its status as an EU Member State. Notification of intention to withdraw is not itself definitive or irrevocable. If the State decides in accordance with its own constitutional requirements (not those of other States) to remain, it may do so up until the time of withdrawal (by withdrawal agreement when the negotiation period expires).

The court rejected the argument of the EU institutions (the Council and Commission) that all the other Member States would have to agree (in a unanimous Council decision) for there to be a valid revocation of an intention to withdraw in order to avoid Member States abusing [Article 50](#) TEU by revoking notification of intention shortly before the end of the negotiating period then triggering a new period, in order to extend the time for negotiation or as leverage in the negotiations. The Court of Justice noted that this could lead to the forced withdrawal of a Member State against the democratic wishes of its people, which would be inconsistent with the democratic values of the EU and would make the right to withdraw conditional rather than unilateral.

The Court of Justice also rejected the UK government's position that the Court of Justice should decline to answer the question referred to it by the Scottish Court of Session for a preliminary ruling on the proper interpretation of Article 50. The UK said the issue was hypothetical and theoretical. The court disagreed and says the judgment will clarify the options open to MPs when they vote.

### Case details

- Court: Court of Justice (full court)
- Date of judgment: 10 December 2018

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