

ECJ Decision on Exit from Brexit

Monday, December 10, 2018

The ECJ rendered today, 10 December 2018, its [judgment](#) in case C 621/18 Wightman in relation to the question whether the UK can unilaterally withdraw its Brexit notice of 29 March 2017.

There are three key take aways from that judgement:

1. The UK can unilaterally withdraw the Brexit notice prior to (i) the coming into force of the Withdrawal Agreement, or, if there is no Withdrawal Agreement concluded between the EU27 and the UK, (ii) prior to 30 March 2019, or, if there is an extension of the two year sunset period, (iii) prior to the end of such extension of the sunset period. The timing for a declaration for an Exit from Brexit is now clear; it had not yet been clear in the [Advocate General Opinion](#) of 4 December 2018.

2. If the UK declares such Exit from Brexit, after having gone through the required internal constitutional process in the UK, the UK would continue to be a Member State of the EU under terms that are unchanged as regards its status as a Member State. The Withdrawal procedure would just be brought to an end and the UK would not be “punished” but keep its current opt-outs etc.

3. Exit from Brexit would of course also leave the UK committed to the core principles of the EU, in particular

- Ever Closer Union
- Limiting its sovereign rights in ever wider fields
- Primacy of EU law over the laws of the Member States and direct effect of EU law in the Member States
- Application of the Charter of Fundamental Rights of the European Union
- Elimination of the barriers which divide Europe, meaning free movement of persons.

The judgement gives the UK Parliament an option which was not available before. However, it is doubtful whether the UK Parliament would use that option on the basis of its current mandate, given that both the main parties campaigned on a manifesto to deliver Brexit. But the judgement could be used in conjunction with either an general election (which probably is less likely) or a second referendum, which may be a little more likely now than a week ago, but still fraught with constitutional, political and practical difficulty.

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