

## **Alert | International Trade/Brexit**



**December 2018**

### **ECJ Confirms UK Can Withdraw Brexit Notice Unilaterally**

The EU Court of Justice ruled today, 10 December, that the U.K. can unilaterally withdraw its “Brexit” notification to the EU.

The ruling follows the advice of the advocate general to the EU Court last week, that the U.K. should be able to revoke the notification without the consent of the other 27 EU member states (see GT Alert, [Brexit – Can the U.K. Stop Brexit Without EU Consent?](#)).

Notification of the U.K.’s intention to leave the EU was given by U.K. Prime Minister Theresa May to the European Council on 29 March 2017, under Article 50 of the EU Treaty. In December 2017, members of the U.K., Scottish, and European Parliaments submitted a petition to the Scottish Court of Session, asking whether the U.K. could revoke the notification unilaterally before the two-year exit deadline set by Article 50. Since the interpretation of Article 50 is a matter of EU law, the Scottish Court asked the EU Court for a ruling on this question.

In November 2018, the EU Court’s 27 judges heard submissions from the petitioners, the U.K., and EU. The EU Court rejected the U.K.’s submission that the case should be thrown out on the basis that the question asked in the petition was theoretical, because the U.K. had no intention of revoking the notification. The EU Court also rejected the EU’s submission that the notification could be revoked only with the other 27 member states’ consent.

In response to the Scottish Court's request that the decision be made available before members of the U.K. parliament's House of Commons were required to vote on the draft EU withdrawal agreement, the EU Court agreed to expedite its decision (see GT Alert, [Brexit – Where Now?](#)). The draft was agreed between the EU and U.K. on 14 November 2018, and the vote was scheduled for 11 December. The vote has today been postponed by Theresa May to allow time to secure additional reassurance from the other 27 EU member states in relation to the Irish backstop, which she recognizes is the main obstacle to securing parliamentary approval of the draft agreement, but at the same time a necessary part of any withdrawal agreement.

The EU Court's ruling confirms to members of parliament voting on the draft agreement that the options open to the U.K. going forward are not limited to leaving the EU with or without an agreement, but also include remaining in the EU. The court confirmed that a decision to revoke the notification must be unilateral and is not subject to EU consent, because it is a decision of a sovereign state to retain EU membership status, which is not suspended or altered by the notification. Consistent with this reasoning, any revocation of the notification must occur before a withdrawal agreement enters into force or, if there is no withdrawal agreement in force, within the two-year Article 50 deadline for exit. Revocation must also be approved following a democratic process in accordance with U.K. constitutional requirements.

For more on Brexit, click [here](#).

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