



AG opines on the possibility for the UK to unilaterally withdraw from the Brexit, while the ECOFIN does not find an agreement on the Digital Services Tax

AG concludes that the UK can unilaterally revoke the notification of its intention to leave the EU

Today, AG Sanchez-Bordona issued his opinion in case C-621/18 (*Wightman and Others v Secretary of State for Exiting the European Union*) which, if confirmed by the Court of Justice, could have a ground-breaking impact on the Brexit.

On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland ("UK") notified the European Council of its intention to withdraw from the European Union and the European Atomic Energy Community (EAEC) ("the notification of the intention to withdraw").

On 19 December 2017, various members of the Scottish Parliament, the UK Parliament and the European Parliament (jointly referred as "the applicants") lodged before the Court of Session, Outer House (UK), a petition for judicial review seeking clarification as to whether the notification of the intention to withdraw may be revoked unilaterally before the expiry (29 March 2019) of the two-year period under Article 50 of the Treaty on the European Union ("TEU"), so that, in the event of that revocation, the UK would remain a member of the European Union. The Court of Session referred that question to the CJEU.

Contrary to the views of the Commission and the Council, which contend that Article 50 TEU allows revocation subject to the unanimous approval by the Council, the AG concluded that Article 50 TEU allows the unilateral revocation by the notifying Member State until the agreement for the withdrawal from the European Union is formally concluded.

The AG mainly grounded his conclusion on:

- Article 68 of the Vienna Convention on the Law of Treaties ("VCLT"), pursuant to which notifications of withdrawal from an international treaty may be revoked at any time before they take effect;
- Articles 31 and 32 of the VCLT.

The AG also clarifies that, although the UK should be allowed to unilaterally revoke the notification of the intention to withdraw, such revocation shall be considered as valid only subject to the following conditions:

- i. the revocation must be notified by means of a formal act addressed to the European Council;
- ii. the revocation must respect national constitutional requirements;
- iii. the revocation is subject to a temporal limit, since revocation is possible only within the two-year period that begins when the intention to withdraw is notified;

- iv. the revocation must respect the principles of good faith and sincere cooperation, in order to prevent abuse of the procedure laid down in Article 50 TEU.

A confirmation by the Court of Justice of the Opinion of the AG would confirm the possibility for the UK to unilaterally put an end to the Brexit.

ECOFIN failed to reach an agreement on the digital services tax

During today ECOFIN meeting, Ministers held a debate on the proposal to establish a digital services tax. Published by the EU Commission on 21 March 2018, the proposal has been conceived as an interim solution aimed at addressing the most urgent gaps in the taxation of the digital economy, while ensuring a level playing field for all businesses.

Following a thorough analysis of the technical issues, the EU Council Presidency put forward a compromise text containing the elements that have the most support from Member States. However, the text did not gain the necessary support and was not discussed in detail.

Against this background, France and Germany presented a joint declaration, which invites the EU Commission and Council to narrow the scope of the digital services tax proposal, with a view to targeting exclusively companies engaged in online advertising. The Franco-German joint declaration urges the EU Council to reach an agreement *"without delay and in any case before March 2019 at the latest"*. The new proposal should come into force in 2021 (unless a global solution is agreed upon at the OECD level before that date) and expire by 2025; it should not prevent Member States *"from introducing in their domestic legislation a digital tax on a broader base"*.

Today's failure to reach an agreement could have repercussions on the Italian web-tax, approved in 2017 and whose implementation was put on hold by the government while waiting for a more comprehensive solution at EU level.

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