Although Brexit means Brexit, as Mrs. May's mantra goes, there is little certainty as to what Brexit *exactly* means. The June 23 referendum has plunged not just the UK, but also the EU into a state of uncertainty. The Prime Minister's declaration at the opening of the Birmingham Conservative Party conference on October 2, that the withdrawal process will start "before the end of March 2017" lays down a timetable for withdrawal, but does little to solve the many uncertainties of Brexit.

While part of the uncertainty revolves around domestic constitutional issues—such as the necessary degree of parliamentary involvement in the withdrawal process, or the effects on the status of Scotland and Northern Ireland—what is highly uncertain is also the future outlook of the relationship between the EU and a post-Brexit UK. Future relations will have to be worked out through a long and complex negotiation. Not only is this a daunting task, given how closely intertwined the economies and the legal orders of the UK and the EU have become after more than forty years of integration. The negotiation is also an open-ended process that could lead to a variety of different outcomes, ranging from "integration without membership" along the lines of the European Economic Area agreement to a brutal severance of any connection with the EU legal order.

Against this background, Article 50 TEU, the now famous provision detailing the road to withdrawal, appears to bring at least some clarity. Indeed, the provision of an express right to withdraw from the EU is a welcome novelty introduced by the Lisbon Treaty. Before 2009, while it was largely assumed that withdrawal would be legally admissible, this possibility was not regulated by the EU Treaties. As a result, had a Member State decided to leave the Union, it could have done so unilaterally, and neither the withdrawing State nor the Union (or the other Member States) would have been obliged to negotiate a withdrawal agreement. This would have certainly led to much more confusion than we are witnessing these days.

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Article 50 TEU has the merit of making clear that withdrawal is possible, but that it has to follow certain rules and—in principle—be negotiated. Only if negotiations have not led anywhere after two years, or a longer period unanimously agreed on by the European Council, does a unilateral withdrawal become possible.

The Article 50 procedure

Of course, one should not assume that having provided for a withdrawal procedure solves every problem. Indeed, Article 50 TEU leaves a number of question unanswered. Perhaps the most crucial one relates to the effects of the notification by a Member State that it intends to withdraw from the Union. Although notifying the European Council of its intention to withdraw from the Union is a necessary step if a Member State wishes to leave, it is only the starting point of the withdrawal process. After the notification, the leaving Member State continues to be part of the EU, enjoys the same rights and has the same obligations as any other Member State. It only has a special status in that, within the Council of the EU and the European Council, it is excluded from discussions and decisions "concerning it". Additionally, the notification marks the starting point for the negotiation of a withdrawal agreement between the Member State and the EU. Finally, it is also from the time the notification is made that the two-year term for unilateral withdrawal starts running.

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There is no provision in Article 50 TEU dealing with the question of whether the notification, once made, can be revoked. Yet this question is crucial because of the very structure of the withdrawal procedure. Arguably, the Treaty was drafted in such a way as to put the withdrawing Member State at a disadvantage in the negotiating process. Formal negotiations do not begin until the Member State has made its notification. At the same time, negotiations have to be concluded within two years. Failing an agreement, at the end of the two-year period the withdrawal takes effect automatically, with serious consequences for both parties

but especially for the leaving Member State, which would be cut off from the internal market without any transitional arrangement. It is true that the Treaty provides for a possible extension of the two-year period, but that is subject to the veto of each of the other 27 Member States. Therefore, the timetable of the withdrawing process places the EU in a stronger negotiating position than the withdrawing State: the threat of a unilateral ejection after two years may be used to pressure the latter into accepting unfavourable conditions, so long as they are better than an outright exclusion from the single market.

Is Brexit reversible?

This reasoning, however, is only true if it is assumed that the notification cannot be revoked. If a Member State, having notified the European Council of its intention to withdraw, can later change its mind, then the negotiating positions appear much more balanced. At the end of the negotiation, facing the prospect of unfavourable terms, the withdrawing Member State could just think better of it and decide that staying is better than leaving. As the Constitution Committee of the House of Lords has recently noted, it is highly uncertain whether a revocation would be permitted. According to the Committee, it would therefore be a safer course of action for the UK Government to assume that the notification is indeed irreversible.

Assuming the worst case scenario can be wise, but there are actually at least three good reasons that support the opposite view. First, international law suggests that the notification could be revoked. Although the EU is an international organization unlike any other and has its own autonomous legal order, it is still based on international treaties. Additionally, the Court of Justice has clarified that customary international law forms part of that legal order and is binding upon the EU institutions (case C-162/96, Racke; case C386/08, Brita,). Therefore, if the EU Treaties are silent on whether the notification may be revoked, one should turn for an answer to customary international law.

Since the main objective of the European Union is the creation of an "ever closer union among the peoples of Europe", a provision authorizing the withdrawal of a Member State must necessarily be viewed as an exception and as such be subject to a strict interpretation.

The Vienna Convention on the Law of Treaties (VCLT), which for the most part codifies customary law, lays down a procedure dealing with, inter alia, withdrawal from an international treaty. Article 65(1) VCLT states that the intention of a party to withdraw from an international agreement must be notified to the other parties. Crucially, Article 68 VCLT states that a notification made according to Article 65 "may be revoked at any time before it takes effect". Although it has been pointed out that the customary status of Articles 65-68 VCLT is contested, most commentators (for example, Villiger and Tzanakopoulos) agree that Article 68 is, among those provisions, the one which most likely reflects customary law. Therefore, international law supports the view that the notification of withdrawal from the EU Treaties, as from any other treaty unless expressly stated otherwise, is reversible as long as the withdrawal has not become effective.

Not just a matter of law

Even if one assumes that Article 68 VCLT does not correspond to customary law and that there is no general revocability rule in international law, however, strong arguments in favour of the view that the notification is revocable can be drawn from a systematic and teleological interpretation of Article 50 TEU. Since the main objective of the European Union is the creation of an "ever closer union among the peoples of Europe" (Article 1 TEU), a provision authorizing the withdrawal of a Member State must necessarily be viewed as an exception and as such be subject to a strict interpretation. The EU and its institutions should strive for the preservation of unity, rather than for disintegration. Additionally, the principle of loyal cooperation, that should shape the relationship between the Union and the Member States, reinforces this conclusion. Therefore, if a Member State decides to revoke its intention to withdraw, this should be admitted and even viewed favourably.

Taking the opposite view would have paradoxical consequences. Suppose that a Member State has notified the European Council of its intention to withdraw, but has later changed its mind. Suppose also that the other Member States welcome its continued participation in the EU. If it is assumed that the notification cannot be revoked, the only solution would be to wait until the withdrawal takes effect, then for the ex-Member State to request to join the European Union anew, following the long and cumbersome accession procedure. Clearly, that would make little sense.

Finally, admitting that the notification could be revoked is also consistent with the principle of democracy and with the respect that the EU Treaties mandate for the constitutional identity of the Member States. Indeed, the existence of a withdrawal right is not only a consequence

of the derived nature of the EU legal order, but also an expression of respect for the democratic choices of the Member States and their citizens. As long as the choice is made "in accordance with its own constitutional requirements" and the procedure set forth in Article 50 TEU is followed, a Member State that no longer wishes to be part of the EU is free to leave.

As we have seen, however, the road to withdrawal is long and its outcome unpredictable. Negotiating an agreement on withdrawal and some basic features of the future relationship may take years and the outcome is hardly foreseeable today. Now that the formal beginning of the negotiation is still months ahead divergent views have surfaced both on the EU and on the UK side, with the press pointing to fundamental differences even within the UK Government. One should not expect those disagreements to be quickly overcome. On the contrary, they might even be exacerbated by the negotiations.

Suppose that in two or three years, long after the UK has notified its intention to withdraw, a second referendum on the EU membership is held and the Remain side wins. Or that, maybe after a general election, the British Parliament decides to reverse its decision to withdraw. Why should that not be possible? As long as the decision is taken in accordance with national constitutional requirements, why should British citizens and their representatives be irrevocably bound by a notification made years earlier and under different circumstances? Would it not be more democratic to assume that they may have second thoughts, especially considering that the stakes are high and the uncertainties great?

Who decides?

Arguments in favour of a right to revoke the withdrawal notification are numerous and powerful. Yet there is one essential question which can hardly be overestimated: Who should decide whether the notification may be revoked? As the issue relates to the interpretation of a provision of the EU Treaty, it squarely falls within the jurisdiction of the Court of Justice. However, it is not granted that such question will ever reach the Court and, even if it does, it will require several months at least. Moreover, the Court might not even be best placed to decide on such a politically sensitive issue.

Rather, the best solution would arguably be a political agreement *before the notification is made*. According to the constitutional structure of the EU, it would be for the European Council to take a commitment on the issue, whereby it should clarify that the notification can be revoked at any time before the withdrawal takes effect. This solution would not only facilitate the conduct of negotiations. It would also give hope to those who still think that

Brexit is neither a solution to the problems of European integration nor a cure for the anxieties of the British people.

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