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**“Withdrawal negotiations: beyond the provisions of Article 50”**

**AFCO Committee meeting, “Public hearing on the Assessment of the implementation of Article 50 TEU”**

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First of all I would like to thank all Professors for fascinating thought provoking contributions. The AFCO report looks at how article 50 has been testing the EU institutional framework, its constitutional integrity, how the Union has coped with the unprecedented confluence of a very sophisticated institutional construct and difficult political challenges. As rapporteur I have been interested in lessons stemming from the application of Article 50 TEU, including in terms of the internal functioning of the Union and of the protection of its interests and values.

Article 50 creates a process for leaving by giving MS the right to withdraw, whilst the values on which treaties are based are not called into question.

As a legal basis for an unprecedented process it does not offer indications on all the steps of the procedure nor it replies to all issues raised by the withdrawal. Many of those issues were solved by the European Union institutions in the conduct of the process after the notification by the UK of its intention to leave the European Union, following the referendum.

Indeed, Article 50 TEU does not define substantive conditions regarding several steps of the procedure, from the notification and its format or timing, to the guidelines of the European Council or their scope, or even the content of the withdrawal agreement, or the exact meaning of the "framework" of the future relationship, not to mention the sequencing of the negotiations. These conditions were defined along the way by the institutions of the European Union.

The European institutions had to navigate through the EU legal order in search of legal certainty to many practical issues and required solutions.

Article 50 TEU does not define an objective for the withdrawal, but the EU institutions defined it as ensuring the orderly withdrawal of the UK, by guaranteeing as much

clarity and legal certainty as possible for all those affected by the process of one member state's departure from the Union and its consequences, in particular for citizens, businesses, stakeholders and international partners, and settling the disentanglement of the UK from the Union and from its rights and obligations as a Member State. That brings to our reflection an important question about the extent to which the objective of ensuring legal certainty has been achieved. This question is particularly relevant in the context of practical experience with the confrontational clauses incorporated into the Internal Market Bill and subsequently withdrawn.

The process of withdrawal under Article 50 TEU, negotiations of the Withdrawal Agreement and the ensuing negotiations on the new partnership were rather expeditious, conducted against the time deadlines, to a certain extent only imposed by the article 50 as such. However, there were several extensions of the two-year period under Article 50(3) TEU, and a transition period was also set in the Withdrawal Agreement using as the legal basis the article itself. It is not at all obvious to what extent the extensions were an evident consequence of the sheer complexity of the process and to what extent they were brought by purely political considerations and interference.

The UK side viewed the transitional period, called indeed the implementation period, as allowing coordination "between the withdrawal treaty on the one hand and the future relations treaty on the other", with the aim "to have a smooth transition between the past in the EU and the future in the new arrangement". The EU considered that it would provide for bridges towards the foreseeable framework for the future relationship. However, the agreement on the future relationship was finally concluded just a few days before the end of the transition period.

Regarding political declaration, it raised some controversy during the negotiations, including its meaning, its binding force and its scope. It was seriously amended after the change of the government, but finally it was officially rejected by the British side as a framework for the future relationship and very few "parameters" of the ambitious, broad, deep and flexible partnership that were foreseen in the declaration as agreed by both parties passed on to the final agreement as concluded in December. In reality therefore it did not play any meaningful role in the negotiations of the Trade and Cooperation Agreement.

Under Article 50 TEU, an agreement is not mandatory. In the process of withdrawal of the UK there was a permanent risk and a real threat of a no-deal scenario, and the talks were at times tense and contentious. Article 50 TEU does not solve the issue of the possible exit without an agreement, and how to address such possibility and its effects. As the no deal risk had been hanging above our heads throughout the process, as early as in December 2017 the European Commission launched the preparedness process with a focus on consequences of the situation when the UK becomes a third country and there is no agreement on the orderly exit. Again, the European institutions have provided a framework for a situation when the application of the article 50 does not lead to an orderly withdrawal. This of course does not cover the situation when a member state would not reach out to the article 50 to leave the European Union but rather use other avenues existing in the international law.

It is probably worth looking at the politics of the withdrawal process in particular with regard to the impact of specificities of the democratic legal order in the withdrawing member state. Article 50 talks about the national constitutional requirements and does not envisage any intervention on the EU side even though the departing state is a fully-fledged member state till the entry into force of the agreement on the future relations. It might be indeed useful to look at the interplay between domestic legal requirements and the problems that might arise as a result of the interplay between national and European legal constructs, in particular in moments when political trust has been rather weak.