**THE EU’S DUTY TO RESPECT HUNGARIAN SOVEREIGNTY: AN ACTION PLAN**

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**1. Introduction**

As Russia was invading neighbouring Ukraine, a clear majority of Hungary’s voters renewed their support to Viktor Orbán’s government.[[1]](#footnote-1) United for the occasion in a coalition of six parties, the opposition failed to convince the electorate to change the political course which Hungary has taken since Orbán’s Fidesz party took over in 2010.[[2]](#footnote-2) Winning a fourth consecutive term to lead the country, the Hungarian Prime Minister was immediately congratulated by Russia’s President Putin and several other prominent representatives of Europe’s far right,[[3]](#footnote-3) all particularly appreciative of Viktor Orbán’s increasingly nationalistic and revanchist rhetoric,[[4]](#footnote-4) as much as his aggressive anti-EU politics, which he has actively propagated through captured media and widespread publicly-funded campaigns.[[5]](#footnote-5)

The victory speech of the emboldened Hungarian leader was indeed crystal clear as to his intention to double-down on his confrontation with the European Union.[[6]](#footnote-6) An intention on which he has already acted as the EU has been grappling with the return of war on the European continent. Departing from critical common approaches, Hungary held up the adoption of some EU sanctions on Russia,[[7]](#footnote-7) refused to provide (military) assistance to Ukraine or to allow the latter’s transit through Hungarian territory,[[8]](#footnote-8) or even to support Ukraine's Application against Russia before the International Court of Justice, under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.[[9]](#footnote-9) Instead, the Hungarian government has strengthened its links with the Kremlin,[[10]](#footnote-10) while providing support to Putin-friendly autocrats in south-east Europe, including by way of acquiring media outlets to relay their toxic propaganda across the volatile region.[[11]](#footnote-11) In sum, Hungary has thus been taking positions which are more in sync with those of powers that are unsympathetic to the European integration process,[[12]](#footnote-12) and ultimately contributing to the destabilisation of the whole of Europe.[[13]](#footnote-13)

Orbán-led political dissociation from the European integration course[[14]](#footnote-14) comes in addition to a remarkably consistent track-record of defiance of EU fundamental rules over his past three mandates, covering the greater part of Hungary’s membership in the EU. The legal deviations are well established and have been regularly, if too slowly, condemned at European level, whether through European Commission infringement procedures and decisions of the European Court of Justice,[[15]](#footnote-15) the European Parliament’s reports and initiatives,[[16]](#footnote-16) or by some Member States[[17]](#footnote-17) and close EU partners like Norway - sometimes at the cost of diplomatic harassment in return.[[18]](#footnote-18)

Hungary´s de-democratisation has also been widely documented,[[19]](#footnote-19) the country being recently characterised as a “hybrid regime of electoral autocracy” in the European Parliament.[[20]](#footnote-20) The participation of the Hungarian government’s representatives in the [European] Council has indeed been questioned in consideration of the provisions of Article 10 TEU.[[21]](#footnote-21) To be sure, the OSCE report on the 2022 elections acknowledged that while “well administered and professionally managed”, they were also “marred by the absence of a level playing field”.[[22]](#footnote-22)

One could be forgiven for having serious doubts as to the democratic legitimacy of the results.[[23]](#footnote-23) And yet, keeping in mind all the structural flaws of the regime, they also indicate that, despite the multiple alarms being rung by various international and European organisations and governments about its evolution, a majority of the Hungarians who went to the ballot box on April 3 were seemingly not persuaded to use their vote to change the direction the country has taken since 2010. As the elections results were (silently) conceded in Brussels and in other EU capitals,[[24]](#footnote-24) they were internally interpreted as a democratic vindication of Orbán’s politics over EU principles and procedures. The Hungarian Minister of Justice suggested as much when declaring that “[p]eople are (…) following European events, and their response to the Article 7 procedure is that they support the Hungarian government’s policy on Europe and on all other issues related to the rule of law (…) And a mandate of more than 3 million voters overwrites everything and gives the right answers to everything.” [[25]](#footnote-25)

In other words, the Government was given a democratic mandate to flout the rule of (EU) law, and thus to remain firmly on its collision course with the EU. In further opposing national democracy to common EU principles, it has been making it clearer than ever that it does no longer subscribe to the values and objectives of EU membership as they stand, and that it regards the latter as incompatible with Hungary’s sovereignty and aspirations. The (unexpected) size of the pro-Orbán vote may be seen (partly at least) as a validation of the Government’s stance, and in turn a democratic blessing of Hungary’s further withdrawal from the Union’s constitutional order.

**2. Acknowledging Hungary’s sovereign choice**

In its seminal *Wightman* ruling, the Court of Justice of the EU recalled the basic principle that the “European Union is composed of States which have freely and voluntarily committed themselves to [the] values [of liberty and democracy, which are among the common values referred to in Article 2 TEU, adding that] EU law is thus based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that those Member States share with it, those same values”.[[26]](#footnote-26) The Court also made clear that the Union cannot force a state either to join or to withdraw therefrom against its (people’s) will. By the same token and as the exit procedure of Article 50 TEU confirms, a Member State cannot be bound to remain in the Union either.

Hungary’s membership is founded on an initial democratic choice to join.[[27]](#footnote-27) The Government was mandated to act upon an aspiration not only to fulfil the conditions to accede, but then also to operate in accordance with the requirements of membership to be able to enjoy all the benefits and privileges associated therewith. Membership indeed presupposes that, as any other Member State, Hungary continues to respect the basic principles and objectives of the EU legal order, including that of sincere cooperation. The Court of Justice recalled the terms of that basic social contract in its *Repubblika* decision whenunderscoringthat “compliance by a Member State with the values enshrined in Article 2 TEU is *a condition for the enjoyment of all of the rights deriving from the application of the Treaties* to that Member State” (emphasis added),[[28]](#footnote-28) indicating conversely, that non-compliance therewith would have to entail a limitation of those rights.

That fundamental quid pro quo infuses the whole EU constitutional order, and finds particular expressions in various provisions like Articles 2, 7, 49 and 50 TEU. The social contract inherent in membership is also buttressed by the specific monitoring and enforcement mechanisms enshrined in the EU founding Treaties. Member States’ breaches of EU rules must be addressed and remedied to restore and preserve the equality of Member States and citizens before EU law, and the solidarity among them, but also to ensure that governments act in line with their original democratic mandate to belong in the Union, unless and until that mandate is withdrawn. At that point then lies the limit to the legitimate enforcement of EU law in a Member State.

If a Member State’s government deliberately and consistently disregards the basic requirements of membership, including those deriving from Article 2 TEU, with the population’s renewed (if tacit) blessing, the EU and other Member State must respect that choice too, despite the considerable impact on the rights of all Union citizens this entails.[[29]](#footnote-29) EU institutions and other Member States should then facilitate the smooth and orderly withdrawal of that state from the EU. This is not just a matter of respecting Hungary’s sovereignty and democracy. It is also a matter of preserving the integrity of the EU constitutional order, and respecting the democracy and sovereignty of other Member States within it.

Artificially keeping recalcitrant Hungary in the EU by attempting, hitherto unsuccessfully, to force its government genuinely to respect the common rules and principles, also raises questions of democracy in the EU as a whole. For insisting on a reluctant inclusion has costs, and not only of a financial nature. Through different tactics, the Hungarian government has increasingly obstructed the normal EU decision-making and disrupted the treaty-based EU institutional machinery,[[30]](#footnote-30) thereby endangering important common policy initiatives, and corrupting the very functioning and trustworthiness of the Union more generally. Preserving Hungary’s membership despite its defiance of EU rules, principles, and policies, impedes the ability of the EU and other Member States to fulfil the objectives the latter (or at least most of them) have in common. It allows the disruptive state to impose its will, at the expense of other states’ and peoples’ aspirations, as enshrined in the founding Treaties. The defence of democracy within the EU constitutional order does not entail that the EU and other Member States should allow the Orbán government to hijack the EU course. Instead, it requires that they help it fulfil its sovereign wish no longer to be bound by the basic terms of the Treaties, and instead to join the “Europe of nations” to which it aspires and which already exists, outside the EU.[[31]](#footnote-31)

This is indeed what Article 50 TEU is for. EU primary law establishes relevant procedural arrangements for an orderly withdrawal for a Member State that does no longer intend to be bound by the common Treaty rules. Facilitating the exit of a Member State that feels uncomfortable within the EU legal order is thus more congruent with EU rules and principles than artificial inclusion, especially if the latter is constitutionally more costly for the rest of the Union. Conversely, such departure would instead be an opportunity for the EU to enhance its own cohesion and solidarity, which is after all its *raison d´être*.

To be sure, the EU need not fear another member’s leaving. The reality of Brexit has confounded fears that UK withdrawal would cause serious damage to the EU itself. Quite the opposite happened. It is indeed remarkable how quickly Brexit became simply a fact of life, and not more than a background noise compared to the main EU agenda, while the real problems were left for the withdrawn UK itself to cope with. Also, with all the respect due to that great country, Hungary is not the UK, be in terms of its political leadership, economic and security resources, defence capabilities etc: the EU has managed the latter´s departure, it will also handle the former´s. In sum, the withdrawal of a Member State that does more harm than good in the day-to-day running of the Union, and poses a long-term threat to its functioning, and to its ability to defend itself, is to be welcomed not dreaded.

**3. Giving courage to Hungary’s sovereign decision to withdraw**

Article 50(1) TEU foresees that a Member State’s decision to withdraw from the EU should be taken in accordance with its own constitutional requirements. The European Court of Justice also indicated in *Wightman* that fundamental questions of membership, viz. States’ decisions to accede, to withdraw or to remain, should be sovereign and result from a “democratic process”.[[32]](#footnote-32)

Given that the Hungarian constitution has been and can still be modified at will, thanks to the enabling two-third majority in parliament, and in view of the Government’s control over the Constitutional Court,[[33]](#footnote-33) there is little doubt that a decision to depart from the EU would be considered in line with Hungary´s “constitutional requirements”. And having won a fourth consecutive mandate with that two-third majority, the Hungarian government has seemingly obtained the required democratic “support [for its dissociating] policy on Europe”, as recalled earlier.

Arguably, therefore, the basic conditions of Article 50 TEU are fulfilled for the Hungarian government formally to activate the withdrawal process. Yet for now, it appears unwilling to act on its own words and convictions. Understandably so, as it has been led to believe over the past ten years that it “can have its cake and eat it”: namely, that it may remain in the Union on its own terms, that is, enjoying the privileges of membership without having to observe associated obligations in terms of compliance and cooperation. Arguably, the Government is unlikely to consider sending in its formal notification as long as it does not get a clear signal from the EU institutions and other Member States that its position in the EU is not tenable considering the basic terms of the social contract recalled by the Court in *Repubblika*, and that it should therefore either fundamentally change its approach to the EU, or prepare for an orderly departure in line with its professed aspirations on Europe, and on the country’s place therein.

Assisting Hungary will thus require more than what EU institutions and other Member States have been willing to offer so far, namely more than reacting as if the Government’s systemic prevarication could be addressed as ordinary breaches of EU law. By not confronting Orbán’s consistent EU-conflicting policies more vigorously, EU institutions and other Member States have tacitly tolerated that it could continue to evade the fundamentals of membership. They have also contributed to making Orbán’s policies appear acceptable in the EU, in turn attractive for other Member States, and more popular at home, while undermining the EU’s authority internally and externally. To be sure, Hungary has not been seriously challenged with the real prospect of losing any of its EU membership privileges as a result of not meeting the conditions for enjoying them, as the lingering “Article 7” procedure demonstrates.[[34]](#footnote-34)

The EU and other Member States might still be tempted to opt for the status quo in their approach to Hungary, hoping that it will ultimately bear fruits in terms of changing the country’s course, or simply in the belief that the problem will eventually pass. They might even be interested to discuss and settle the precise terms of Hungary’s membership, along the lines of the UK “renegotiation” that was agreed within the European Council in February 2016.[[35]](#footnote-35) Judging from the (in)actions of the Hungarian government since its fourth term began, all this is at best wishful thinking and increasingly a dangerous dereliction of duties. The costs for the EU of keeping Orbán’s membership on its present footings are steadily increasing, not only in terms of rule of law and democracy within the Union, but also in terms of its own security.[[36]](#footnote-36)

More will therefore be needed to assist Hungary either fully to (re)operate as a Member State, or to act on its supposed sovereign wishes. Perhaps more importantly, more will be required from the EU institutions and other Member States to preserve the integrity of the EU constitutional order, emulating the way they managed the UK prior to, and in the context of Brexit. As long as the pressure on Hungary to make up its mind does not increase, the Hungarian government is unlikely to comply and cooperate, nor will it notify, assuming instead that it can continue to enjoy the benefits at no costs – while using the Union’s (financial) shelter to pursue its antagonistic politics inside and outside.

It is only if the costs of the status quo become legally, financially, institutionally more tangible, and if the risk of losing membership benefits (and not only financial) is made credible, that Hungary’s PM may potentially reconsider, or at least clarify the country’s position. This signal could indeed operate as a wake-up call for the population, and their views of membership. Hungarian voters may have hitherto supported Orbán’s policies notably because, judging from EU reactions (or lack thereof) thus far, those policies did not seem to affect Hungary’s membership, reinforcing the perception that Hungarians could get the best of both worlds. It should become clear to them that the present Orbán Regime and EU membership are incompatible, and that one has to choose between the two.

It is then critical for the Member States and institutions to facilitate Hungary’s decision to depart, should the Government double-down, as it does, on its anti-EU politics. The help for Hungary no longer to be subject to EU obligations, and ultimately to be inclined to notify, may entail different complementary approaches.

At a basic level, the Commission will naturally have to continue using the classic instruments of enforcement to safeguard the EU legal order, though perhaps more systematically, strategically and strongly than hitherto.

Beyond, and in line with the terms of the social contract recalled by the Court in *Repubblika*, suspension mechanisms will have to be used actively to protect the financial and institutional interests of the EU and its other Member States. Ideally, this is how the activation of the Conditionality mechanism ought to operate,[[37]](#footnote-37) as well as the use of other conditionality mechanisms, including the withholding of the Recovery Fund.[[38]](#footnote-38)

On that same level, and with some pressure from the European Parliament, the Council should finally come to a decision under the procedure of Article 7(1) TEU, and possibly formulate clear recommendations to test Hungary’s willingness to comply and preserve its membership. A decision under Article 7(2) TEU, although more unlikely in view of the taxing procedural requirements, could also be contemplated to suspend parts of Hungary’s membership rights to protect the institutional integrity of the EU, while offering the country a space to transition back into full-fledge membership, should it be serious about it.

Indeed, Member States and EU institutions should prevent Hungary from obstructing decision- making. A suspension of rights under Article 7(2) TEU would help. But adopting decisions *à 26* (or less) should also be considered, either through recourse to enhanced cooperation wherever possible, [[39]](#footnote-39) or through international agreements outside the Treaties, if necessary, as was done when the UK objected to engage.[[40]](#footnote-40) Hungary would thus be relieved from the trouble of having to take part in decision-making, or new policy initiatives, while preserving the EU’s ability to act, and the integrity of its procedures.

Its opposition to EU initiatives, or the wish not to take part therein, will naturally lead to Hungary’s (PM’s) increased relegation in the operation of the EU. That relegation could originate from outside the Union too, for instance, on the basis of decisions from EEA-EFTA partners. Hungary has already been side-lined within the operation of the EEA as a result of its failure to comply with the requirements for obtaining funding in the context of the EEA financial framework of 2014-2021. That funding might not be available either in the context of the new EEA protocol being negotiated, which is likely to include stronger conditionality, following the adoption of the EU’s own conditionality mechanism.[[41]](#footnote-41) Other EU partners might indeed follow suit and question Hungary’s ability effectively to implement the law deriving from the agreements concluded with the EU. Questions about the functioning of its administrative and judicial systems[[42]](#footnote-42) could potentially lead to suspension, by EU partners, of the principle of mutual recognition – which has been extended to third states through various external agreements e.g. the Lugano Convention, or the Surrender Procedure Agreement.[[43]](#footnote-43)

In short: the combined suspension of European funding, of mutual recognition benefits, of entitlements under EU external agreements with close partners, and potentially of its decision-making rights, would make it clear, together with systematic infringement proceedings, that Hungary’s non-compliance with the requirements of membership does hamper its enjoyment of privileges associated therewith. It would indeed help restore the fundamental social contract recalled by the Court in *Repubblika*.

Should the Hungarian government stubbornly maintain its EU-conflicting course, the question of Hungary’s continuing membership should then be raised by other Member States. To be sure, issues of membership are usually discussed among members of the European Council, be it in the framework of the procedures envisaged in Articles 49, 50 or 7 TEU. It is indeed in the context of the European Council that the list of membership requirements is regularly discussed, updated and endorsed. Raising the question of Hungary’s membership at that level does not presuppose a formal notification under Article 50 TEU. Recall the exchange among the members of the European Council to reconsider the terms of UK membership,[[44]](#footnote-44) ultimately leading to the February 2016 deal.[[45]](#footnote-45) Recall also that in the wake of the UK consultative referendum of 26 June 2016, the other Member States’ representatives together with the presidents of the Commission and European Council met to start making arrangements for the UK’s withdrawal, that is, well before the formal notification was handed out by the UK Prime Minister that confirmed the intention of the UK to withdraw. In other words, it was not the notification itself that kick-started the discussion within the EU on UK membership, but rather it was the announcement, and then the result, of the consultative referendum that did so, in anticipation of the eventual formal notification.

Other Member States could therefore begin to consider ways to react to the negative signals sent by the Hungarian authorities. Although it would be best if all 26 organised it together, the initiative for the discussion of Hungary’s membership could come from a group of like-minded Member States, or indeed from the President of the European Council. While the discussion could simply revolve around the question of whether Article 50 TEU is being triggered by the Hungarian authorities’ systematic defiance,[[46]](#footnote-46) that discussion could also be envisaged as the last attempt to salvage Hungary’s membership: the Hungarian PM could be given an opportunity to confirm to his peers his intention to keep his country in the EU on the basis of the established membership requirements, which his country accepted upon accession and committed itself to continue observing.[[47]](#footnote-47) That confirmation would have to be substantiated by the Government’s verifiable commitment to address the concerns expressed by EU institutions, Member States and EU partners, and thus by a track record of compliance and cooperation.[[48]](#footnote-48) If the Hungarian authorities were unwilling to meet those commitments, the other Member States could consider it as Hungary’s sovereign choice no longer to be bound by the Treaties and thus to withdraw. Overall, the onus would be on Hungary to restore its membership, or to notify its departure – bearing in mind that the country could still reconsider its intention and revoke its notification.[[49]](#footnote-49)

**4. Hungary’s withdrawal agreement**

Once Hungary has delivered its formal notification of intention to withdraw in accordance with Article 50 TEU, it is obviously in everyone’s interest for Hungary to leave with a negotiated agreement laying down the more precise terms of departure. Ideally, that negotiated withdrawal would become fully effective before the next round of elections to the European Parliament in 2024 – thereby avoiding the need for the Union to make temporary provision for the lingering presence of Hungarian MEPs, as well as the unwanted burden for the Orbán Regime of having to stage more elections.

In that regard, we are lucky (after a fashion) to have the precedent of the EU-UK Withdrawal Agreement (WA) to draw upon.[[50]](#footnote-50) The experience of the Brexit negotiations in identifying a great many of the complex issues raised by any withdrawal, as well as the ready-made template for appropriate solutions now provided by the EU-UK WA, should help speed things up significantly also in the case of Hungary’s departure. Consider, for example, the “separation regimes” that facilitate the winding-up of outstanding situations involving the cross-border movement or marketing of goods, the recognition and execution of European Arrest Warrants, or the retention, use and destruction of personal or sensitive data. Or consider, in similar vein, the provisions of the EU-UK WA creating a governance framework for managing the consequences of departure – including management and decision-making institutions, principles of legal interpretation, and clear pathways for dispute resolution.

In fact, Hungarian withdrawal should in certain respects prove easier to arrange than was Brexit. Like the UK, Hungary is not in the Eurozone – so we do not have to worry about the complications of undoing a Member State’s participation in the single currency. But in addition, Hungary is a net beneficiary of the Union’s largesse, not a net contributor to the budget – so we should be able to avoid much of the political acrimony that was associated with calculating the UK’s “divorce bill”. Moreover, Hungary is not a marine fishing nation – so again, many of the political and legal complications that so aggravated EU-UK relations during the Article 50 TEU process need not be repeated here. Plus there is no real equivalent to the unique challenges facing the Ireland / Northern Ireland border, that would need to be addressed in the case of Hungary. After all, the negative impacts of Brexit upon the continued functioning of the Good Friday peace settlement constituted the core conundrum that really rendered the EU-UK withdrawal negotiations so sensitive, difficult and prolonged (and indeed, continue to act as a source of tension and instability in post-Brexit relations).[[51]](#footnote-51)

That said, there are still some specific and potentially difficult questions to address in the event of Hungarian withdrawal, for which Brexit provides only an incomplete model, or at least offers solutions that may well deserve reconsideration.

In the first place, Hungary participates in elements of European integration and cooperation where the UK did not (or at least not to the same degree or on the same terms). Unwinding those relationships will undoubtedly require fresh efforts, and possibly some creative problem-solving, from the Union negotiators. For example: Hungary’s withdrawal would inevitably entail its extraction also from the Schengen system as a matter of Union law – calling for a new set of “separation regimes” to ensure the smooth and orderly winding-up of a much wider range of legal relationships than were ever applicable to the UK. And though there may be no direct equivalent to the Irish border, there are still demographic complexities to contend with: for example, what additional arrangements or guarantees might be considered or needed to ensure respect for national minorities living across the new Union-Hungary frontier?[[52]](#footnote-52) In addition: Hungary’s withdrawal would naturally spell the end of its direct participation in the Union’s common foreign, security and defence policies; as well as its membership, as a Member State, of various PESCO programmes and initiatives – so another set of dedicated “separation provisions” would be required in those particular fields.[[53]](#footnote-53) Or again: even if Hungary’s legal and budgetary disentanglement from the Union will be eased by its status as a non-Eurozone state and net beneficiary of Union funds, what might withdrawal nevertheless mean for the complex financing arrangements that underpin the *Next Generation EU* pandemic recovery system? Questions might arise (for example) about how best to extract Hungary from the Member States’ mutualised obligation to underwrite the Union’s massive borrowing on the capital markets, in the event that the Union’s available budgetary means were to prove, in due course, insufficient to meet its repayment commitments.[[54]](#footnote-54)

In the second place, how far might Hungarian withdrawal require a “transition period” equivalent to that provided for under Part Four of the EU-UK WA – during which the status quo of membership rights and obligations would be largely (though not entirely) preserved for a period potentially extending over several more years even after formal departure had taken place? The UK’s demand for a transitional regime was largely driven by factors particular to the British situation: the state’s own near-total lack of preparations for the outcome of the 2016 referendum, the UK government’s entirely unrealistic expectations about what could possibly be achieved under the auspices of the Article 50 TEU process, and the domestic political instability that undermined the formulation and pursuit of a clear and coherent withdrawal agenda. In the case of Hungary, one might also have particular reservations about maintaining the status quo of membership rights and obligations even on a temporary basis: true, the ex-Member State’s total exclusion from the Union’s decision-making framework during any transition period would insulate against further Hungarian attempts at institutional sabotage; but the prospect of the Orbán Regime using transition to disown and disregard even more of its legal obligations, while the Union would in reality have still fewer effective means to respond to such non-compliance, is hardly an enticing one. Though there are still some pragmatic countervailing considerations to take into account – not least the fact that a short transition period might prove useful to allow the Union’s own public and private actors adequate time to rearrange their operations, cooperations and supply chains, etc. with Hungary.

In the third place, we need to ask: should we be content simply to copy-and-paste perfectly serviceable parts of the EU-UK WA into any future Hungary treaty, even when we know that those Brexit arrangements are somehow flawed and certainly capable of substantial improvement? That is particularly the case with Part Two of the EU-UK WA, on future protection of the acquired rights of EU citizens already living in the UK and of UK nationals already resident in the EU. On the one hand, there might be an understandable concern to maintain equality of treatment between ex-Union citizens, so as not to create appreciable differences in the treatment of British and Hungarian nationals within the Union – or in turn, between Union citizens within each of those ex-Member States. On the other hand, we have surely learned some important lessons about the distinct limitations built into the provisions of Part Two of the EU-UK WA: for example, the risks to (especially vulnerable) individuals whose prior residence was not in strict compliance with Union free movement rules and who now find themselves dependent upon the application of “more generous” domestic rules by their host state;[[55]](#footnote-55) and the serious problems of inconvenience, insecurity and discrimination that may arise, even for qualifying individuals, when the host state is allowed to issue digital-only confirmation of protected status.[[56]](#footnote-56) Why should the flawed template of Brexit be allowed to infect also any future withdrawal agreement? Indeed, why not take the opportunity of Hungarian withdrawal to correct also the treatment of UK nationals within the EU (insofar as it falls within Union’s competence to do so, and even if that leads to a certain lack of reciprocity with the UK itself)?

In the fourth place, negotiations about Hungary’s smooth and orderly withdrawal would take place under the shadow of broader questions about its future relationship to the Union. The European Council decided in the Brexit context that that future relationship can be formally negotiated and agreed only after the definitive departure of the relevant State from the Union.[[57]](#footnote-57) And it would be perfectly possible to have a viable withdrawal agreement even without any clear and precise understanding of EU-Hungary future relations. But this is still an issue that Article 50 TEU expressly instructs the Union to take into account when discussing withdrawal itself.

Of course, the Union’s own ideas for reframing relations with its closest neighbours remain in flux: for example, even after initial discussions within the European Council, it remains unclear how far proposals for a “European Political Community” will gain further traction.[[58]](#footnote-58) But for now, it remains for Hungary to articulate its true intentions and preferences for after its reversion to third country status – while the Union itself needs to decide how far to reciprocate those intentions and accommodate those preferences, and in doing so, must still take into account those very same reasons that led to Hungary’s withdrawal in the first place. For example: how should one react, if Hungary were to seek membership of the European Economic Area as a direct replacement for the economic dimension of Union membership? Not only would that revive Brexit-era debates about the proper legal process for “EEA conversion”,[[59]](#footnote-59) but it would also raise new questions about whether EEA membership is or should be subject to lesser values and lower expectations than those attached to Member Statehood. Norway might have a thing or two to say about that.[[60]](#footnote-60) And such questions would not only arise in the case of trade relations. What if Hungary expressed the political desire to remain associated with the Schengen zone, though now as a third country? Formally, it would need to negotiate a new international agreement with the Union to that effect.[[61]](#footnote-61) But substantively, it is unclear what good it could possibly do, to prolong Hungary’s already disruptive participation in a legal and operational system built on the principles of mutual recognition, mutual trust and shared fundamental values.[[62]](#footnote-62) Or again: what if Hungary wished to continue cooperation with the Union in the fields of CFSP/CSDP? Once more, formally speaking, it would need to do so via the legal structures and under the conditions appropriate to a non-Member State – as in the case of exceptional third country association with PESCO.[[63]](#footnote-63) But once more, when it comes to the substance of the matter, there are serious questions about how far Hungary really “shares the values on which the Union is founded” and whether it will “not contravene the security and defence interests of the Union and its Member States”.[[64]](#footnote-64)

Perhaps the Orbán Regime will relieve us of the trouble of having to confront such difficult issues, by expressing its preference to pursue only minimal future relations with the Union. In that case, the EU-UK Trade and Cooperation Agreement could here provide a workable template from which to commence discussions – though obviously, there would be greater focus on some issues (like road transport) and less interest in others (such as fisheries).[[65]](#footnote-65) Though if the Orbán Regime decides to reduce Hungary to the status of Putin’s vassal state, or align itself too closely with some other questionable powerplayer, then even the distant relationship embodied in the EU-UK TCA might not be distant enough for the Union’s good taste and best interests, whatever Article 8 TEU may have to say about the importance of positive neighbourly relations.

So, even if they are not quite of the unprecedented nature and mammoth scale of Brexit, there are still bound to be complications and challenges in reaching any negotiated withdrawal settlement for Hungary. But even still, there need be no reason for us all to wait for expiry of the full default period of two years, as from the date of notification of intention under Article 50 TEU, before Hungary’s withdrawal becomes definitive. Completion, ratification and entry into force of the withdrawal agreement could be done more quickly – particularly if a short post-withdrawal transition period were to help provide more time to deal with any tricky but essentially logistical and practical consequences. And as we know from the UK experience, the internal changes to EU law demanded by the withdrawal of a Member State are relatively marginal in nature and can be processed relatively swiftly by the Commission, Council and European Parliament in the exercise of their respective competences.[[66]](#footnote-66) Though in the event that certain unexpected glitches did arise, the European Council’s handling of Brexit also provides a useful precedent both for extending the Article 50 TEU process on an ad hoc basis,[[67]](#footnote-67) and for managing any adverse impacts upon the smooth functioning of elections to the European Parliament.[[68]](#footnote-68)

**5. A no deal Hungarian departure**

Obviously, for Hungary to leave without a negotiated settlement on a smooth and orderly withdrawal would be a less desirable outcome for all concerned. But it would certainly not be unmanageable. After all, the Union developed full “no deal” plans in the case of Brexit – which it held ready to enact and bring into force throughout much of the turbulent period following the UK’s original notification of intention and right up until the final date of British withdrawal.[[69]](#footnote-69) With certain modifications and supplements, those plans could be dusted off and repurposed to manage the specific challenges posed by a Hungarian “no deal”: for example, on citizens’ rights, road and air transport, financial services and climate policy; and by providing targeted financial assistance to those Member States most likely to face significant disruption or adjustment. Such plans may well be sub-optimal, but they would at least help to reduce the adverse impacts of a “no deal” upon the Union, its Member States and their businesses and citizens.

In any case, it is worth recalling that there are a range of issues raised by the prospect of Hungarian departure that the Union would not expect to address even in any negotiated withdrawal agreement, but would instead positively insist that it was for each party to manage for themselves and on a unilateral basis. Consider the field of external relations. In the context of Brexit, the European Council simply declared from the outset that existing international agreements concluded by the Union, or by the Member States acting on the Union’s behalf, or by the Union and its Member States acting jointly, would no longer be applicable to the UK as from the moment of formal departure – though under the final EU-UK WA, the applicability of existing Union international agreements to the UK was in fact continued until the end of the status quo transition period.[[70]](#footnote-70) Otherwise, it fell to the UK to regularise its own international relations – and we assume that the same would be true also for Hungary.

As several commentators observed at the time: just because the Union took unilateral action over the future status of the UK in relation to existing external agreements, did not guarantee that the Union’s international partners would share its assessment or fully endorse its approach, nor that the extrication of the UK from the international legal relations associated with its former Union membership would be free of complication or controversy. For example, we know that the implications of Brexit for the detailed terms of continued Union and UK membership of the WTO were not quite so straightforward to resolve – drawing objections and demands for extra concessions from a range of global trading partners.[[71]](#footnote-71) However, the present authors are unaware of any other major difficulties that arose in practice, either with the preservation of the status quo on external agreements during the transition period, or with the total exclusion of the UK from existing Union agreements thereafter.

But we should not assume too quickly that the situation would prove equally smooth in the case of Hungary. After all, the European world has changed utterly since Putin’s war of aggression on Ukraine – and Russia (or indeed another unfriendly power) might well use the moment of Hungarian withdrawal as an opportunity to stir trouble for the Union, by questioning or disrupting the conversion from the EU of 27 to an EU of 26 on the international stage. Yet that is a contingency we must simply confront if and when the time comes: Putin and his ilk will no doubt continue to stir much else trouble besides, in his determination to sap the strength and undermine the resilience of European liberal democracy.

**6. Conclusions**

The Orbán Regime claims that it wants Hungary to remain a Member State of the European Union. And yet it derides and disowns many of the Union’s fundamental values, while refusing to respect Hungary’s membership obligations, at the same time abusing its institutional position so as to disrupt and undermine the collective will and capacity to act of the other Member States and the Union institutions. That contradictory position is not sustainable for Hungary. And it is not sustainable for the rest.

This contribution has been premissed on that simple reality: continuing Hungarian membership of the Union on the terms staked out by the Orbán Regime is neither tenable nor desirable. We have therefore sketched out a path to facilitate the logical consequences of Hungary’s own sovereign will: encouraging Hungary to notify its formal intention to withdraw, and reaching an agreement that will facilitate a smooth and orderly departure; based on the UK experience, but also taking into account the particularities of the Hungarian situation.

In making that case, in clarifying the reality of the situation, we hope there might still be time for Hungarians themselves to pull back from the brink to which they have been led by the Orbán Regime: to recognise that the promise of keeping Union membership but on Hungary’s own terms is a false one; so if they prefer a life of illiberal authoritarianism over a full and sincere reconciliation to the Union’s fundamental values, they are welcome to pursue it – on their own, or in cahoots with Putin, or whichever other tyrant they might chose, but in any case outside the Union.

Perhaps there is still time and space for supporters of Hungary’s future as a liberal democracy to turn the tide. The circumstances in Slovenia were no doubt very different from those in Hungary in many relevant respects – but the principle of an electorate deciding to return to the collective Union fold, rather than reinforce its own path towards authoritarian isolation, was nevertheless clearly illustrated by the outcome of the April 2022 general election. In the Hungarian case, maybe it will take the cold realities of formal notification, withdrawal negotiations and impending Article 50 TEU deadlines finally to shatter the illusion of exceptionalism and entitlement created by Orbán’s domestic propaganda machine. Even that point need not be too late for the necessary shift in public opinion: after all, the Court in *Wightman* stressed that the relevant State can change its mind and retract its intention to withdraw, right up to the point before departure has become definitive – assuming that revocation represents a decision to remain in accordance with the applicable terms and conditions of Union membership.[[72]](#footnote-72)

But it is equally important that the Union itself – the other Member States and the Union institutions – make clear the extreme stakes that Hungary has been prepared to risk, and render fully credible the outcomes that Hungary’s current position and trajectory demand. Only such clarity and credibility can help shatter the illusion of “Union membership on Hungary’s terms” and thereby enable Hungary’s liberal democrats to present their fellow citizens with a realistic final choice. Just as importantly, only such clarity and credibility can express the Union’s determination – after years of hesitation and frustration – to defend its own values, and to do so on its own terms. That would send a powerful message to the world’s Trumps and Putins – who hold our values in contempt, and see in every faltering of our will or capacity to protect those values, only the opportunity to inflict more damage.

Should the Hungarian people come to realise that supporting the Orbán Regime means leaving the Union and yet that is not really the future they want for their country, then we will have done them a genuine service by clarifying and concretising that choice as well as the steps that are required so as to fix what Orbán came so close to breaking. But if the Hungarian people remain committed to supporting the Orbán Regime, even knowing that it means exit from the Union, then we should actively encourage and facilitate Hungary’s swift withdrawal – since, in such circumstances, the departure of another Member State is not to be feared but welcomed. Either way, the Union will be upholding its commitment to democracy and the rule of law. The latter outcome would, of course, be a terrible tragedy for Hungary’s pro-Europeans. But like their bereft and distraught counterparts in the UK, they must accept the loss of a key battle, and concentrate on the real war for their country to remain a liberal social market democracy, while accepting that the costs of those internal struggles cannot be allowed to endanger the wider cause of European integration and stability.

1. \* University of Liverpool and University of Oslo (respectively).

 The election took place on 3 April 2022. According to official results, the Fidesz-KDNP coalition secured 53.10 percent of the votes and obtaining 135 seats in the National Assembly, thereby keeping its two-thirds majority and its ability to revise the country’s constitution at will. The opposition United for Hungary alliance obtained 56 seats based on 35.04 percent of the votes, while the far-right Our HomelandMovement got 6.17 percent of the vote, which allowed it to enter parliament with 7 seats.30.46 percent of the electorate did not show up for the election. See: <https://hungarytoday.hu/hungarian-election-2022-results/> [↑](#footnote-ref-1)
2. Fidesz came to power earlier, between 1998 and 2002. [↑](#footnote-ref-2)
3. <https://hungarytoday.hu/putin-orban-hungary-election-victory-congratulates/> [↑](#footnote-ref-3)
4. Recall the episode of the controversial carpet Hungary brought to the Justus Lipsius on the occasion of its presidency of the EU council: <https://www.ft.com/content/7e13a96c-2330-11e0-b6a3-00144feab49a> ; <https://www.bbc.com/news/world-europe-12194899.amp> [↑](#footnote-ref-4)
5. <https://www.reuters.com/article/us-hungary-eu-idUSKBN1QU1FL> ; <https://www.reuters.com/world/europe/no-thanks-some-europe-newspapers-refuse-political-ads-hungarys-orban-2021-07-01/> [↑](#footnote-ref-5)
6. “This victory will also be remembered, perhaps for the rest of our lives, because in our battle we were outnumbered like never before: the Hungarian left and the international left on all sides; the Brussels bureaucrats; all the money and every organisation in the Soros empire; the international mainstream media; and, towards the end, even the President of Ukraine. … We’re sending the message to Europe that this is not the past, this is the future.” See further: <https://abouthungary.hu/speeches-and-remarks/speech-by-prime-minister-viktor-orban-following-the-election-victory-of-fidesz-kdnp> [↑](#footnote-ref-6)
7. <https://www.reuters.com/world/europe/hungary-holds-up-eu-sanctions-package-over-patriarch-kirill-diplomats-2022-06-01/> ; <https://hungarytoday.hu/viktor-orban-hungarian-government-oil-embargo-agreement-eu-russian-sanctions/> [↑](#footnote-ref-7)
8. <https://www.politico.eu/article/hungary-foreign-minister-peter-szijjarto-weapon-transit-ukraine/> though changing its mind later: <https://www.pravda.com.ua/eng/news/2022/07/19/7359011/> [↑](#footnote-ref-8)
9. <https://ec.europa.eu/commission/presscorner/detail/fr/statement_22_4509> [↑](#footnote-ref-9)
10. <https://foreignpolicy.com/2022/03/20/viktor-orban-is-the-wests-pro-putin-outlier/> ; <https://foreignpolicy.com/2022/03/14/hungary-orban-russia-war-election/> ; <https://www.euractiv.com/section/global-europe/news/hungarian-fm-in-russia-to-discuss-buying-more-gas/> [↑](#footnote-ref-10)
11. <https://balkaninsight.com/2022/02/11/report-details-orbans-expanding-influence-on-balkan-european-media/> ;

 <https://www.occrp.org/en/spooksandspin/right-wing-hungarian-media-moves-into-the-balkans> [↑](#footnote-ref-11)
12. <https://www.euractiv.com/section/energy/news/eu-solidarity-tested-as-hungary-bans-gas-exports-in-emergency-move/> [↑](#footnote-ref-12)
13. <https://www.politico.eu/newsletter/brussels-playbook/ukraine-speaks-orbans-language-sanctions-push-spyware-moratorium/> <https://twitter.com/panyiszabolcs/status/1550766960593575936> [↑](#footnote-ref-13)
14. Aptly captured in the “staying out” formula the PM used in his notorious speech of 23 July 2022: <https://miniszterelnok.hu/speech-by-prime-minister-viktor-orban-at-the-31st-balvanyos-summer-free-university-and-student-camp/> [↑](#footnote-ref-14)
15. See e.g. <https://ec.europa.eu/info/sites/default/files/40_1_193993_coun_chap_hungary_en.pdf> [↑](#footnote-ref-15)
16. See e.g. <https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html> [↑](#footnote-ref-16)
17. <https://www.washingtonpost.com/world/2021/06/25/dutch-leader-tells-hungary-if-you-dont-like-lgbt-rights-you-can-leave-eu/> [↑](#footnote-ref-17)
18. <https://www.euronews.com/my-europe/2021/07/23/norway-suspends-aid-to-hungary-over-who-should-control-funds-for-ngos> ; <https://www.helsinkitimes.fi/columns/columns/viewpoint/16602-finland-the-new-enemy-of-hungary.html> [↑](#footnote-ref-18)
19. Bogaards, “De-democratization in Hungary: diffusely defective democracy”, 25 *Democratization* (2018), 1481; <https://verfassungsblog.de/hungarys-lesson-for-europe/> [↑](#footnote-ref-19)
20. <https://www.europarl.europa.eu/news/en/press-room/20220711IPR35008/hungary-member-states-have-an-obligation-to-end-attacks-on-eu-values> [↑](#footnote-ref-20)
21. <https://verfassungsblog.de/the-last-chance-saloon/> [↑](#footnote-ref-21)
22. <https://www.osce.org/files/f/documents/2/6/523568.pdf>; <https://www.osce.org/odihr/elections/hungary/515111> [↑](#footnote-ref-22)
23. See e.g. Scheppele: <https://www.journalofdemocracy.org/articles/how-viktor-orban-wins/> ; [↑](#footnote-ref-23)
24. <https://www.euractiv.com/section/politics/short_news/eu-democratic-leaders-turn-their-back-on-orban/> [↑](#footnote-ref-24)
25. <https://rmx.news/hungary/dialogue-of-the-deaf-hungarys-justice-minister-slams-eus-attempt-to-punish-her-country-with-article-7-mechanism/> see also: <https://hungarytoday.hu/justice-minister-hungarians-support-govts-europe-policy/> [↑](#footnote-ref-25)
26. Case C-621/18, *Wightman*, EU:C:2018:999. [↑](#footnote-ref-26)
27. A referendum on joining the EU was held in Hungary on 12 April 2003: 83.8% of voters voted in favour of membership, although with a voter turnout of 45.6%. [↑](#footnote-ref-27)
28. Case C-896/19, *Repubblika*, EU:C:2021:31. [↑](#footnote-ref-28)
29. Case C-621/18, *Wightman*, EU:C:2018:999; see also Case C‑673/20, *Préfet du Gers,* ECLI:EU:C:2022:449. [↑](#footnote-ref-29)
30. Hungary’s interference with established EU decision-making process was particularly obvious in the process leading to the Council’s adoption of the Regulation establishing a conditionality mechanism, see further: Hillion, “Empowering the Filibuster – the EU General Conditionality Mechanism in the European Council”, in Urbanik and Bodnar (eds), *Law in times of Constitutional Crisis* (C.H.Beck, 2021), p. 241; further on abuse of veto: <https://www.lemonde.fr/international/article/2022/07/12/hongrie-plus-isole-que-jamais-viktor-orban-joue-la-politique-du-veto_6134465_3210.html> [↑](#footnote-ref-30)
31. <https://hungarytoday.hu/orban-choose-independence-over-global-governing-and-control/> ; <https://abouthungary.hu/news-in-brief/parliament-adopts-resolution-on-future-of-the-eu>;

 <https://www.lalibre.be/international/europe/2021/06/25/la-hongrie-veut-exporter-sa-propagande-LFZ332BQFJESJM65ZY34GTW35Y/> [↑](#footnote-ref-31)
32. Case C-621/18, *Wightman*, EU:C:2018:999. [↑](#footnote-ref-32)
33. <https://helsinki.hu/en/hungarys-government-has-taken-control-of-the-constitutional-court/> ; https://verfassungsblog.de/the-last-days-of-the-independent-supreme-court-of-hungary/ [↑](#footnote-ref-33)
34. European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)), OJ 2019 C 433, p. 66. [↑](#footnote-ref-34)
35. Though we now have it confirmed by the CJEU that any such “renegotiation” must still comply with the fundamental principles of the Treaties and the requirements of the Union legal order: see Case C-328/20, *Commission* v. *Austria*, EU:C:2022:468. [↑](#footnote-ref-35)
36. <https://telex.hu/english/2022/07/18/western-allies-puzzled-by-hungary-mild-reaction-to-russias-hacking> [↑](#footnote-ref-36)
37. <https://twitter.com/eublogo/status/1549785521374871552> ; [↑](#footnote-ref-37)
38. [Hungary seeks to unlock €15bn Covid recovery funding with new concessions | Financial Times](https://www.ft.com/content/079aa04a-9d44-476c-bfe2-b56835be3660) [↑](#footnote-ref-38)
39. Note, e.g. <https://www.lemonde.fr/en/international/article/2022/06/18/corporate-tax-hungary-blocks-eu-adoption-of-15-minimum-rate_5987253_4.html> ; <https://www.politico.eu/article/eu-to-implement-minimum-tax-rate-without-hungary-le-maire-says/> . Also, e.g. <https://www.reuters.com/world/europe/concessions-hungary-sanctions-not-acceptable-luxembourgs-pm-says-2022-06-03/> [↑](#footnote-ref-39)
40. We refer here to the events surrounding the European Council meeting of December 2011, leading to the Treaty on Stability, Coordination and Governance 2012. [↑](#footnote-ref-40)
41. <https://www.regjeringen.no/en/aktuelt/address_eu_matters/id2911181/> [↑](#footnote-ref-41)
42. https://www.theguardian.com/world/2022/aug/14/viktor-orban-grip-on-hungary-courts-threatens-rule-of-law-warns-judge [↑](#footnote-ref-42)
43. Such questions have already been raised in relation to Poland by the Norwegian Supreme Court, in the context of the application of the EU-Norway Surrender Procedure Agreement: <https://www.domstol.no/no/hoyesterett/avgjorelser/2022/hoyesterett---straff/HR-2022-863-A/> [↑](#footnote-ref-43)
44. <https://www.consilium.europa.eu/en/meetings/european-council/2015/12/17-18/>; <https://www.gov.uk/government/speeches/european-council-june-2015-david-camerons-speech> [↑](#footnote-ref-44)
45. <https://www.consilium.europa.eu/en/meetings/european-council/2016/02/18-19/> [↑](#footnote-ref-45)
46. <https://verfassungsblog.de/poland-and-hungary-are-withdrawing-from-the-eu/>; in practice, EU institutions have expected a formal notification, but the conduct of a state may also amount to an expression of its intention, at least in the context of public international law. See in this respect e.g. the 1974 judgment of the ICJ in the *Nuclear Test* Case (*Australia v France*): <https://www.icj-cij.org/public/files/case-related/58/058-19741220-JUD-01-00-EN.pdf> (thanks to Werner Schroeder on this point). [↑](#footnote-ref-46)
47. As recently articulated by the Court of Justice in *Repubblika*, op. cit. [↑](#footnote-ref-47)
48. One possible context for this process to take place would be Article 7 TEU. [↑](#footnote-ref-48)
49. See further Section 6 (below). [↑](#footnote-ref-49)
50. OJ 2019 C 384 I. [↑](#footnote-ref-50)
51. See further, e.g. Dougan, *The UK’s Withdrawal from the EU: A Legal Analysis* (OUP, 2021), especially Chapter 8. [↑](#footnote-ref-51)
52. In which regard, consider the obligations contained in the Council of Europe’s Framework Convention for the Protection of National Minorities 1995. [↑](#footnote-ref-52)
53. Pursuant to Council Decision (CFSP) 2017/2135 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States, O.J. 2017, L 331/57, Hungary currently participates in around 10 ongoing PESCO projects. [↑](#footnote-ref-53)
54. See further, e.g. de Witte, “The European Union’s COVID-19 recovery plan: The legal engineering of an economic policy shift”, 58 CML Rev. (2021), 635. [↑](#footnote-ref-54)
55. On which, consider Case C-709/20, *CG* v. *The Department for Communities in NI*, EU:C:2021:602. [↑](#footnote-ref-55)
56. See further, e.g. <https://www.theguardian.com/uk-news/2020/jan/20/unsettled-status-eu-citizens-want-card-to-prove-right-to-stay-in-uk>; <https://www.the3million.org.uk/_files/ugd/cd54e3_44ba5ad58fee4f54818bdb293553c759.pdf>. [↑](#footnote-ref-56)
57. See, in particular, European Council (Article 50), *Guidelines following the United Kingdom’s notification under Article 50 TEU* (29 April 2017), especially at paras 4-5. [↑](#footnote-ref-57)
58. See European Council Conclusions of 23-24 June 2022, especially at paras 1-3. [↑](#footnote-ref-58)
59. See further, e.g. Hillion, “Brexit means Br(EEA)xit: The UK Withdrawal from the EU and its Implications for the EEA”, 55 CML Rev. (2018), 135. [↑](#footnote-ref-59)
60. And see also, on these issues, the contribution of Cremona and Nic Shuibhne in this Special Issue. [↑](#footnote-ref-60)
61. Consider, e.g. Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis, O.J. 1999, L 176/36. [↑](#footnote-ref-61)
62. In which regard, consider caselaw such as Case C-216/18 PPU, *LM*, EU:C:2018:586; Cases C‑354/20 PPU & C‑412/20 PPU, *L and P*, EU:C:2020:1033; Cases C-562-563/21 PPU, *X and* Y, EU:C:2022:100; Case T-791/19, *Sped-Pro* v. *Commission*, EU:T:2022:67. [↑](#footnote-ref-62)
63. See Council Decision (CFSP) 2020/1639 establishing the general conditions under which third States could exceptionally be invited to participate in individual PESCO projects, O.J. 2020, L 371/3. [↑](#footnote-ref-63)
64. To quote from the general conditions for exceptional third country PESCO participation as laid down in Article 3 of Decision 2020/1639. [↑](#footnote-ref-64)
65. O.J. 2021, L 149. [↑](#footnote-ref-65)
66. E.g. COM(2018) 556 Final/2; COM(2018) 880 Final; COM(2018) 890 Final; COM(2019) 195 Final; COM(2019) 276 Final; COM(2019) 394 Final. [↑](#footnote-ref-66)
67. E.g. European Council, First Extension Decision 2019/476, O.J. 2019, L I 80/1; European Council, Second Extension Decision 2019/584, O.J. 2019, L 101/1; European Council, Third Extension Decision 2019/1810, O.J. 2019, L I 278/1. [↑](#footnote-ref-67)
68. E.g. European Council Decision 2018/937 establishing the composition of the European Parliament, O.J. 2018, L 165 I /1. [↑](#footnote-ref-68)
69. See, in particular, Commission, *Preparing for the UK’s withdrawal from the EU on 30 March 2019: Implementing the Commission’s Contingency Action Plan*, COM(2018) 890 Final. And thereafter, e.g. COM(2019) 195 Final; COM(2019) 276 Final; COM(2019) 394 Final. [↑](#footnote-ref-69)
70. See, in particular, European Council (Article 50), *Guidelines following the United Kingdom’s notification under Article 50 TEU* (29 April 2017), especially at para 13; then Part Four of the EU-UK WA on transition, especially Article 129. [↑](#footnote-ref-70)
71. Recall that the initial proposals to other WTO members, as contained in the Joint Letter from the Union and the UK of 11 October 2017, were almost immediately rejected, e.g. by the USA, Canada and New Zealand. [↑](#footnote-ref-71)
72. Case C-621/18, *Wightman*, EU:C:2018:999. [↑](#footnote-ref-72)