

General Court rejects challenge to EU decision opening Brexit negotiations as inadmissible (Shindler v Council of the European Union)

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Public Law analysis: The General Court rejected a challenge to the validity of the decision of the Council of the EU in May 2017 to authorise the European Commission to open negotiations with the UK for the Brexit withdrawal agreement. This case, brought by thirteen British citizens residing in EU Member States outside the UK, is one of a number of Brexit-related challenges in the UK and EU courts. The General Court rejected it as inadmissible because the Council decision under challenge does not have binding legal effect on Mr Shindler and the other applicants. Written by Maya Lester QC, Brick Court Chambers.

Shindler v Council of the European Union [T-458/17](#)

What are the practical implications of this case?

The draft Withdrawal Agreement has been agreed and endorsed by the UK and EU. At the time of writing, the UK Parliament is preparing to vote on the agreement. The judgment is of limited practical effect, but it is interesting to consider the approach taken by the European Court, because this is one of a number of Brexit-related cases coming before the EU courts.

What was the background?

The UK notified the EU of its intention to withdraw from the EU in March 2017. [Article 50](#) of the Treaty on European Union provides a two-year period after that notification for the negotiation of the terms of a Member State's withdrawal from the EU. The Council decided, in May 2017, to authorise the European Commission to open negotiations with the UK for on terms set out in the annexes to the decision. It was that decision that the applicants (Harry Shindler and others) tried to challenge.

The applicants are all UK citizens resident in other EU Member States who did not have a right to vote in the EU referendum in June 2016, or the UK general election. They wished to quash the Council's decision to authorise withdrawal negotiations. They brought an annulment action in the General Court (the first instance court of the Court of Justice of the European Union) under [Article 263](#) of the Treaty on the Functioning of the European Union, which permits the Court of Justice to quash decisions of the EU institutions if they breach EU law.

What did the court decide?

The Court of Justice decided that the case was inadmissible because the Council decision being challenged does not (as it would have to, to be susceptible to this kind of challenge) produce binding legal effects capable of affecting the applicants' interests by bringing about a change in their legal position.

The Court of Justice said the Council's decision was only a preparatory act authorising negotiations for UK's withdrawal which did not itself alter the applicants' legal rights. The applicants were not challenging the decision to withdraw from the EU, or to notify the EU of the UK's intention to withdraw. The decision simply authorised the negotiations and set out the EU's objectives in those negotiations. It did not determine the rights of EU citizens as at the date of UK withdrawal from the EU.

The court noted that the applicants' legal situation, particularly as regards their status as EU citizens, is likely to be affected if the UK withdraws from the EU, but this potential impact on their rights (the nature and extent of which is uncertain) did not result from the contested decision. Accordingly, the case was inadmissible and the court did not consider or decide the substantive challenge.

Case details

- Court: General Court
- Judges: L Madise, R da Silva Passos, K Kowalik-Bańczyk, C Mac Eochaidh
- Date of judgment: 26 November 2018

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