Brexit and the unchartered waters beyond Lisbon: a critical analysis of the legal uncertainties surrounding the right to withdraw from the European Union

Mário Simões Barata[[1]](#footnote-1)

1. Introduction

One of the novelties of the Treaty of Lisbon, as underlined by the German Federal Constitutional Court, is the introduction of an explicit withdrawal clause in European Union (EU) primary law. The codification of such a right in Article 50º of the Treaty of the European Union (TEU) has received mixed reviews in Europe. In this sense, Marianne Dony writes that supporters of a withdrawal clause underline the fact that belonging to the EU is not an imposition but a choice, while those who are more critical argue that it is contrary to the interests of the Union and its citizens.[[2]](#footnote-2) This ambivalence is also present in Koen Lenaerts and Piet Van Nuffel’s assessment of the right to withdraw when they defend that it «may endanger the internal cohesion of the Union» but it «also underscores the deliberate choice made by each Member State belonging to the Union».[[3]](#footnote-3) However, the controversial nature of recognizing withdrawal in the Treaty is but one piece of the legal and political puzzle. More important is the fact that the consecration of the right to leave the EU raises more questions than it resolves due to the lack of clarity and the absence of concrete legal guidelines connected with the provision. In our opinion, these deficiencies are a source of political uncertainty and legal insecurity that render the norm incapable of answering the numerous thorny questions that will stem from a withdrawal of the United Kingdom or any other Member State due to the lack of domestic political support or to the euro and sovereign debt crisis. The perception of this dubious situation is brilliantly captured by Neil Walker in these words: “but my inability to express the meaning of Brexit also has to do with the sheer uncertainty of what will follow. The skies are ominously dark, the short and long term forecasts are deeply unpredictable”.[[4]](#footnote-4) Consequently, this paper seeks to outline the various questions that the provision fails to answer and critically analyze the current rules that deal with the possibility of leaving Lisbon.

1. Unilateral withdrawal and federalism

Article 50, nº 1, of the TEU, states that any Member State has the right to withdraw from or leave the EU according to the rules prescribed in their respective constitution. The wording of the first part of this disposition firmly establishes a right to withdraw and the exercise of this right is not dependent upon the verification of any “substantive conditions” according to authors such as Hannes Hofmeister or Eliza Malathouni.[[5]](#footnote-5) In other words, a Member State who chooses to exercise its right to exit the Union does not have to justify its action, not even invoke the classical reasons for withdrawal or secession of a political subunit as underlined by Cass Sunstein: limitation of civil and political rights; economic self-interest; economic exploitation; history and territory (i.e., questions connected to the original acquisition); as well as cultural integrity and self-determination.[[6]](#footnote-6)

The inclusion or absence of any conditions connected to the exercise of the right in question is relevant from a federal perspective due to the fact that two of its forms treat withdrawal/secession in different manners. According to Daniel Elazar and Ronald Watts a confederation and a federation are two different forms of federalism.[[7]](#footnote-7) On the one hand, a confederation (i.e., a union of states) is compatible with secession due to the fact that withdrawal is an expression of state sovereignty. This idea is underlined by Frederick Lister who sustains that confederations are unions of sovereign states who preserve their inherent right to denounce the confederal pact/constitution and secede from the union.[[8]](#footnote-8)

On the other hand, federations do not recognize a unilateral right to withdraw from the federal union. According to Watts federations do not permit the unilateral secession of their political subunits in their constitutions for three reasons. Firstly, federations do not recognize a unilateral right to secession because it could be used by one of the subunits in a coercive manner (i.e., political blackmail) that would weaken the whole system. Secondly, it would create a certain level of anxiety and uncertainty that would hinder federal economic development. Thirdly, political theorists argue that the introduction of this type of clause would undermine the principle of coordinacy between levels of government in a federation.[[9]](#footnote-9)

However, these reasons have not prevented the introduction of a conditional or controlled secession clause in the constitution of some federations such as Ethiopia, St Kitts and Nevis, and Sudan or the recognition of this type of right through judicial review in Canada. The Ethiopian Constitution consecrates the right to secede but regulates this possibility through a procedure that includes a two thirds majority vote in the council of the respective state and a majority vote in a referendum organized by the federal government. The fundamental law of St. Kitts and Nevis permits Nevis to leave the federation if qualified majorities (i.e., two-thirds) are reached in the legislative assembly of Nevis and in a referendum. In Sudan, the peace agreement, signed in 2005, provided for a referendum to be held on the independence of South Sudan after a ten year waiting period. Finally, the Canadian Supreme Court admitted, in 1998, that the provinces had a right to secede from the Canadian federation. Yet, this right is not unilateral and can only be exercised if the population of one of the provinces indicates that is willing to leave by a clear majority in response to a clear question.[[10]](#footnote-10) This would oblige the rest of Canada to negotiate a secession agreement with the province in question that would have to respect the interests of all of the parties involved and the fundamental principles of the constitution: federalism, democracy, rule of law, and the respect for (entrapped) minorities).[[11]](#footnote-11)

The second part of the norm under analysis ties the right to withdraw from the EU to the observance of the rules prescribed in the constitution of the Member State who has exercised its «option» – in the words of Ingolf Pernice – to leave.[[12]](#footnote-12) The compliance with the rules and procedures established in the fundamental law of a Member State who wishes to exit the Union is of particular importance in the opinion of Jean-Victor Louis who considers that this legal criterion decouples this right from everyday politics. In this sense, he offers the example of the Government of Malta which manifested its intention to join the Union; then suspended the decision; and later expressed a renewed desire to accede to the EU.[[13]](#footnote-13)

In sum, Article 50, nº 1, of the TEU recognizes a unilateral right to withdraw from the EU that resembles the right to secede from a confederation and it also constitutes a significant argument for those who argue that the Union is a voluntary association of states as opposed to a *mixtum compositum* (i.e., a combination of international and national elements)[[14]](#footnote-14), a federal polity[[15]](#footnote-15), a federal union of States and citizens[[16]](#footnote-16) or a constitutional composite[[17]](#footnote-17). In this sense, the Federal German Constitutional Court understands the legal nature of the EU as a “Staatenverbund” or an “Association of Sovereign States” and its position is partly based on the existence of a right to unilaterally withdraw from the Union.[[18]](#footnote-18)

1. Divorce: Procedure and Agreement

In the words of Jean Claude Piris Article 50, nº 2, of the TEU, consecrates a “divorce procedure”.[[19]](#footnote-19) However, the procedure laid down in the provision is described as «embryonic» by the legal doctrine, namely Malathouni.[[20]](#footnote-20) Firstly, the Member State who has decided to withdraw from the EU must notify the European Council of its intention to do so. The reception of the notification triggers the next step in the procedure. This step concerns the negotiation and signing of an agreement between the withdrawing State and the EU governing the exit and bearing in mind the future relationship between the two parties according to the guidelines prescribed by the European Council.

The agreement shall be negotiated in accordance to the rules provided in Article 218º, nº 3, of the Treaty on the Functioning of the European Union (TFUE) which disciplines the conclusion of international agreements by the EU. According to this provision, the Commission must submit recommendations to the Council which then authorizes the opening of the negotiations. The Council also adopts the negotiation directives and appoints the negotiating team. Once an agreement is reached, the Council authorizes its signing according to article 218, nº 5, of the TFUE. Council deliberations are based on a qualified majority and the procedural rules in the area of international agreements require that it obtains the consent of the European Parliament.

The agreement foreseen in Article 50, nº 2, of the TEU, is widely discussed in the legal doctrine because of the important questions connected with it. One of the first observations made relative to the agreement is that is not mandatory. Therefore, there can be a withdrawal from the EU with an agreement or without an agreement. In other words, there are two types of withdrawal according to Fausto de Quadros.[[21]](#footnote-21)

Another issue raised by wording of the norm is tied to the fact that the norm does not specify what type of matters that should be the object of the agreement. This critical omission is criticized by several authors and leads them to consider concrete areas that an agreement should govern.

A specific matter that should be regulated in the agreement refers to fundamental rights and this question is raised by several authors. For example, Koen Lenaerts and Piet van Nuffel write the following: «in this connection, it will have to be determined to what extent rights and obligations stemming from Union law may continue to apply to citizens of the withdrawing Member State».[[22]](#footnote-22) The question regarding fundamental rights and other important matters is also considered by German author Jochen Herbst who writes the following: «most importantly, though not expressly mentioned in the provision, any legal consequences of the withdrawal regarding the rights and obligations for any natural persons and legal entities affected by the withdrawal need to be dealt with. In the absence of a well-drafted withdrawal implementation agreement, the specific legal consequences will remain open to doubt».[[23]](#footnote-23)

However, fundamental rights are not the only question that a withdrawal agreement would have to deal with. A comprehensive withdrawal agreement would have to cover a wide variety of matters. For example, Herbst raises some important questions connected to the content of the withdrawal agreement in the following passage: «What, for instance, should happen to the employees of the Union who are nationals of the withdrawing Member State? What will be the fate of the Union’s offices on the territory of the withdrawing Member State? And can nationals of the withdrawing Member State still be eligible for scholarships sponsored by the EU? Is the withdrawing Member State obligated to pay its outstanding contributions? What happens, e.g., to damage claims by individuals based on European law against the withdrawing Member State which were already brought before the ECJ during the two-year notice period but which have neither been satisfied nor even adjudicated by the effective date of withdrawal?».[[24]](#footnote-24) In our opinion, these questions constitute a sample of the issues that any agreement would have to regulate in the name of legal security.

A second question that Article 50, nº 2, of the TEU, does not consider regards the legal status of the withdrawing Member State during the negotiation period. This is a particularly important question because the wording of Article 50º does not prohibit the State in question from participating in the general decision-making process. Consequently, it can influence the decisions of the EU – although it no longer wants to be a member - in a positive or negative manner.[[25]](#footnote-25)

The procedural rules on withdrawal are highly deficient because they do not contemplate the question of the effects or consequences of withdrawal on the internal level. In this sense, Hofmeister and Raymond Friel remind us that the withdrawal of any Member State would have significant changes on the composition and operation of the Union’s institutions and budget and these situations would inevitably lead to the revision of the Treaties.[[26]](#footnote-26) The impact of withdrawal is also considered by Adam Lazowski who underlines the necessity “to delete all provisions and protocols annexed to the Founding Treaties touching upon a departing country”.[[27]](#footnote-27) However, Article 50º of the TEU is silent on this matter and does not foresee any procedural rules regarding this particular situation. Consequently, the remaining Member-States would have to resort the revision procedures laid out in Article 48º of the TEU in order to deal with the “constitutional” implications of any withdrawal.

A final question that Article 50, nº 2, of the TEU does not consider is the possibility of negotiation failure due to the fact that the withdrawal agreement might not obtain the necessary consent of the European Parliament or the approval of the Council. This particular situation relative to «institutional divergence»[[28]](#footnote-28) within the Union is considered by Maria Luísa Duarte who defends that the Member-State retains its «fundamental right to leave, which is solely dependent upon the unilateral act of notification».[[29]](#footnote-29)

1. Deadline

The Treaties governing the EU cease to apply in the Member State who has exercised its right to withdraw from the Union when the withdrawal agreement enters into effect. However, this is the first of two possible deadlines. A second deadline may be found in the second part of the norm in question and regulates the possibility of a withdrawal without an agreement. In such a case, the treaties cease to apply two years after the formal notification of a member-state’s decision to exit the Union. However, the last part of the norm under analysis permits an extension of this two year period. The European Council can extend this period after having obtained the agreement of the Member State.

Article 50, nº 3, of the TEU, is extremely relevant because withdrawal will occur even in the absence of an agreement. This particular consequence is noted by authors such as Hofmeister and Dony.[[30]](#footnote-30) However, this is not the only aspect of the norm that generates controversy. Criticism is also directed towards the two year period that a Member State has to wait before formally leaving the EU. In this sense, several authors point to the following drawbacks: its insufficiency; lack of necessity; and some negative aspects connected with the possibility of its extension beyond this time frame.

The two year period is criticized by Jochen Herbst due to the fact that he considers it to be insufficient. This argument is tied to the overall problem of negotiating a withdrawal agreement. As we have already seen the agreement must cover a wide number of complex issues and Herbst argues that the two year period is «far too short for negotiating and concluding a withdrawal implementation agreement in an “average” Member State withdrawal case».[[31]](#footnote-31)

The period of time between notification of the intent to leave and effective withdrawal is also censured by Friel who does not see the necessity or the point of including it in the Treaty. Friel considers that the period in question is irrelevant due to the fact that there is no legal obligation to sign an agreement and questions its justifiability. In this sense, he argues that the Member State will be subject to the burdens of belonging to the Union.[[32]](#footnote-32)

The possibility of extending the two year period is scorned at by Louis who considers that extending this time table is incompatible with the idea of membership in the EU which requires a certain level of commitment. He argues that a Member State cannot simultaneously have one foot out and the other in the Union and considers that this would be a source of legal insecurity.[[33]](#footnote-33)

A final set of questions regarding this specific precept relates to the threat of withdrawal and the possibility of a member state withdrawing its withdrawal. In other words, can a member state change is mind during this two year period? Alan Tatham states that the threat of withdrawal may be used by the larger states to obtain concessions by the smaller states.[[34]](#footnote-34) Similarly, Louis considers that the threat of withdrawal favors the large Member States of the EU and writes that it may be used to blackmail and intimidate the smaller states. Friel also reflects upon the possibility of a Member State withdrawing the withdrawal notification. Although he advocates that a State should be allowed to withdraw its withdrawal, he is uneasy about this course of action because of its possible use as a negotiating strategy between States and sustains that the threat of withdrawal favors the larger States of the Union.[[35]](#footnote-35) This last possibility is also considered by Louis who defends that a Member State should not be allowed to withdraw its withdrawal.[[36]](#footnote-36)

1. Institutional questions

Article 50, nº 4, of the TEU curtails the rights of the representatives from the withdrawing Member State in the European Council and the Council. In this sense, the members from the withdrawing Member State in these two European institutions cannot participate in the deliberations and decisions regarding withdrawal.

The precept in question is criticized by the legal doctrine because it leaves out other institutions of the EU. For example, several authors criticize the fact that Members of the European Parliament (MEP) from the Member-State that has exercised its right to withdraw from the Union maintain their rights. In other words, MEP can participate and vote in the deliberations connected to the approval or rejection of the withdrawal agreement. This possibility is especially considered by Michael Dougan who offers a possible explanation for not extending any type of limitation to institutions such as the European Parliament, the European Commission or the Court of Justice of the European Union. In Dougan’s opinion, the limitations in article 50, nº 4, of the TEU, were probably not extended to these institutions because of their supranational character. However, he does not agree with this option and defends that “there is no good reason to offer the MEP the right to exercise any influence (let alone a potentially decisive one) over the agreement which will determine future relations between that country and the Union”.[[37]](#footnote-37)

Others authors point to the fact that the provision does not cover judicial matters. In this sense, the precept in questions does not offer any legal guidelines relative to the operation of the Court of Justice of the European Union. According to Ladowski a decision would have to be made in regard to the Judges and Advocate Generals from the departing country referring to the possibility of hearing new cases and the temporal limit of their functions. There is no reason to bar Judges from the State who has formally notified the European Council of its decision to withdraw from continuing to hear and decide cases. However, their terms should formally end on the date of withdrawal from the EU.[[38]](#footnote-38) Within this operational context, Friel raises a very interesting point connected with the possibility of a withdrawing Member State appointee to the Court of Justice of the European Union participating in any case surrounding withdrawal. According to Article 218, nº 11, of the TFUE any Member State, the European Parliament, the Council and the Commission may obtain an opinion from the Court of Justice of the European Union on a draft agreement in accordance to the Treaties. However, the provision referring to withdrawal seems to have not contemplated this particular possibility.[[39]](#footnote-39)

1. Regrets and readmission

The last aspect of the withdrawal clause worthy of analysis is tied to the possibility of a State who no longer belongs to the European Union, because it has formally withdrawn, of applying for readmission. In other words, a former Member-State has changed its mind and now seeks to re-enter the Union. In the case of regret, article 50, nº 5, of the TEU, affirms that a State who has left the Union can apply for membership in the EU. The norm in question states that the application must be processed according to Article 49º of the TEU. This means that EU primary law treats this particular possibility just like any other formal application for membership filed by a country who was never a member of the Union. Consequently, there is “no automatic right to rejoin” the EU according to Anna Wryozumska.[[40]](#footnote-40) In other words, Article 50, nº 5, of the TEU, does not contemplate any fast track procedure regulating the re-entry of a former member nor does it “punish” a State for having left the Union by imposing a specific waiting period before assessing its readmission. Therefore, the solution regarding re-entry is neutral in the sense that it neither facilitates accession nor imposes any sort of penalty for having left the Union. However, this apparent neutrality relative to the issue of readmission is questionable from a legal and political perspectives. In our opinion, the introduction of a specific waiting period in the wording of the precept under analysis would have the potential to not only limit the threat of withdrawal but the misuse of the right in question as well.

1. Concluding remarks

The Treaty of Lisbon formally recognizes a right to withdraw from the EU and the introduction of this possibility underlines the voluntary character of the Union. In other words, membership is not an imposition – it is an option. The right in question is not tied to the verification of any condition. Therefore, the Member-States of the EU have a unilateral right to withdraw from the Union which is typical of a confederation. However, Article 50º, of the TEU, is very sketchy and leaves many questions unanswered. The most important questions surround the absence of legal guidelines regarding the conditions of the exit as well as what matters should be regulated in the withdrawal agreement concerning the exit and future relations between the two parties that should be mandatory. Presently, Article 50º, of the TEU, is a source of legal uncertainty and is not capable of addressing the problems that would stem from a withdrawal of the Union. In our opinion, this provision should be amended in a future revision of the Lisbon Treaty in a manner that addresses the questions raised in this paper. However, “controlling” or limiting secession and making it less unilateral will probably generate further political complications due to the fact that this step (i.e., answering the questions that were outlined in the preceding sections) is likely to divide those that support State sovereignty and those that defend a more perfect and an ever closer union.

BIBLIOGRAPHY

Barata, Mário S., «A Natureza Jurídica da União Europeia Após o Tratado de Lisboa», *Boletim da Faculdade de Direito de Coimbra* 90 (2014): 263-313.

Dashwood, Alan, Michael Dougan, Barry Rodger, Eleanor Spaventa and Derrick Wyatt (2011), *European Union Law, 6th edition*, Oxford: Hart Publishing.

Dony, Marianne (2010), *Droit de l’Union Européene*, Bruxelles: Editions de L’Université de Bruxelles.

Dougan, Michael, «The Treaty of Lisbon 2007: Winning Minds, not Hearts», *Common Market Law Review* 45 (2008): 617-703.

Duarte, Maria Luisa (2005), *Estudos de Direito da União e das Comunidades Europeias II*, Coimbra: Coimbra Editora.

Elazar, Daniel J. (1998), Constitutionalizing Globalization: The Post modern Revival of Confederal Arrangements, Lanham: Rowan & Littlefield Publishers, Inc.

Everling, Ulrich (2010), «The European Union as a Federal Association of States and Citizens» in *Principles of European Constitutional Law: Revised Second Edition*, edited by Armin von Bogdandy and Jürgen Bast, Oxford: Hart Publishing, 701-734.

Friel, Raymond J., «Providing a Constitutional Framework for Withdrawal from the EU: Article 59 of the Draft European Constitution», *International and Comparative Law Quarterly* 53 (April: 2004): 407-428.

Friel, Raymomd J., «Secession from the European Union: Checking out of the Proverbial “Cockroach Motel”», *Fordham International Law Journal* 27 (January: 2004): 590 – 640.

Harbo, Florentina, «Secession Right – an Anti-Federal Principle? Comparative Study of Federal States and the EU», *Journal of Politics and Law* 1 (3: 2008): 132-148.

Herbst, Jochen, «Observations on the Right to Withdraw from the European Union: Who are the “Masters of the Treaties”?», *German Law Journal* 6 (11: 2005): 1755-1760.

Hillion, Christophe (2015), «Accession and Withdrawal in the Law of the European Union» in *The Oxford Handbook of European Union Law*, edited by Anthony Arnull and Damien Chalmers, Oxford: Oxford University Press, 126-152.

Hofmeister, Hannes, «Should I Stay or Should I Go? – A Critical Analysis of the Right to Withdraw from the EU», *European Law Journal* 16 (5: 2010): 589-603.

Lazowski, Adam, «Withdrawal from the European Union and alternatives to membership», *European Law Review* 37 (5: 2012): 523-540.

Lenaerts, Koen and Piet Van Nuffel (2011), *European Union Law*. London: Sweet & Maxwell.

Lister, Frederick K. (1996), *The European Union, the United Nations, and the Revival of Confederal Governance*, Westport, Connecticut: Greenwood Press.

Louis, Jean-Victor, «Le Droit de Retrait de L’Union Européene», *Cahiers de Droit Européene* 42(3-4: 2006): 293-314.

Malathouni, Eliza, «Should I Stay or Should I go: The Sunset Clause as Self-Confidence or Suicide», *Maastricht Journal of European and Comparative Law* 15 (2008): 115 – 124.

Mancinni, Susanna (2012), «Secession and Self-Determination» in *The Oxford Handbook of Comparative Constitutional Law*, edited by Michel Rosenfeld and András Sajo, Oxford: Oxford University Press, 481-500.

Pernice, Ingolf, «The Treaty of Lisbon: Multilevel Constitutionalism in Action», *Columbia Law Journal* 15 (Summer: 2009): 349-407.

Piris, Jean-Claude (2010), *The Lisbon Treaty: A Legal and Political Analysis*, Cambridge: Cambridge University Press.

Quadros, Fausto de (2013), *Direito da União Europeia: 3ª edição*, Coimbra: Almedina.

Schütze, Robert (2015), *European Union Law*, Cambridge: Cambridge University Press.

Sunstein, Cass R., «Constitutionalism and Secession», *The University of Chicago Law Review* 58 (2: 1991): 633-670.

Tatham, Alan (2012), «Don´t mention Divorce at the Wedding: Darling!: EU Accession and Withdrawal after Lisbon» in *EU Law After Lisbon* edited by Andrea Biondi, Piet Eeckhout and Stefanie Ripley, Oxford: Oxford University Press, 128-154.

Walker, Neil, «The European Fallout», *German Law Journal 17 – Brexit Supplement* (July: 2016): 125-129.

Watts, Ronald L. (2008), *Comparing Federal Systems, 3rd edition*, Montreal & Kingston: McGill Queen’s University Press.

Wyrozumska, Anna (2013) «Article 50 Voluntary Withdrawal from the Union» in *The Treaty on European Union (TEU): A Commentary*, edited by Hermann-Josef Blanke and Stelio Mangiamelli, Heidelberg: Springer, 1385-1418.

Wyrozumska, Anna (2012), «Withdrawal from the European Union» in *The European Union after Lisbon: Constitutional Basis, Economic Order and External Action*, edited by Hermann-Josef Blanke and Stelio Mangiamelli, Heidelberg: Springer, 343- 365.

1. Adjunct Professor of Law and Political Science – Polytechnic Institute of Leiria – Portugal. The author is grateful for the generous grant provided by the “Fundação Luso-Americana para o Desenvolvimento (FLAD)” which allowed him to participate in the Fifteenth Biennial International Conference of the European Union Studies Association, May 4-6, 2017, Miami, Florida, United States of America. [↑](#footnote-ref-1)
2. Dony, Marianne, *Droit de l’Union européene*, Bruxelles: Editions de L’Université de Bruxelles, 2010, p. 67. [↑](#footnote-ref-2)
3. Lenaerts, Koen and Piet van Nuffel, *European Union Law*, London: Sweet & Maxwell, 2011, p. 98. [↑](#footnote-ref-3)
4. Walker, Neil, «The European Fallout», *German Law Journal 17 – Brexit Supplement* (July: 2016), p. 125. [↑](#footnote-ref-4)
5. See Hannes Hofmeister, «Should I Stay or Should I Go? – A Critical Analysis of the Right to Withdraw from the EU», *European Law Journal* 16 (5: 2010), p. 592; Eliza Malathouni, «Should I Stay or Should I go: The Sunset Clause as Self-Confidence or Suicide», *Maastricht Journal of European and Comparative Law* 15 (2008), p. 115. [↑](#footnote-ref-5)
6. See Cass R. Sunstein, «Constitutionalism and Secession», *The University of Chicago Law Review* 58 (2: 1991), p. 654. [↑](#footnote-ref-6)
7. See Daniel J. Elazar, *Constitutionalizing Globalization: The Postmodern Revival of Confederal Arrangements*, Lanham: Rowan & Littlefield Publishers, Inc., 1998, p. 8; Ronald L. Watts, *Comparing Federal Systems, 3rd edition*, Montreal & Kingston: McGill Queen’s University Press, 2008, p. 10 and 11. [↑](#footnote-ref-7)
8. See Frederick K. Lister, *The European Union, the United Nations, and the Revival of Confederal Governance,* Westport, Connecticut: Greenwood Press, 1996, p. 35. [↑](#footnote-ref-8)
9. See Watts, *Comparing Federal Systems*, p. 169. [↑](#footnote-ref-9)
10. Susana Mancinni uses the term ”negotiated secession”. See Susanna Mancinni,”Secession and Self-Determination” in *The Oxford Handbook of Comparative Constitutional Law*, edited by Michel Rosenfeld and András Sajo, Oxford: Oxford University Press, 2012, p. 497. [↑](#footnote-ref-10)
11. Watts, *Comparing Federal Systems*, p. 169 and 170. [↑](#footnote-ref-11)
12. Pernice, Ingolf, «The Treaty of Lisbon: Multilevel Constitutionalism in Action», *Columbia Law Journal* 15 (Summer: 2009), p. 405. [↑](#footnote-ref-12)
13. See Jean-Victor Louis, «Le Droit de Retrait de L’Union Européene», *Cahiers de Droit Européene* 42(3-4: 2006), p. 306. [↑](#footnote-ref-13)
14. See Robert Schütze, *European Union Law*, Cambridge: Cambridge University Press, 2015, p. 75. [↑](#footnote-ref-14)
15. See Florentina Harbo, «Secession Right – an Anti-Federal Principle? Comparative Study of Federal States and the EU», *Journal of Politics and Law* 1 (3: 2008), p. 144. [↑](#footnote-ref-15)
16. See Ulrich Everling, (2010). «The European Union as a Federal Association of States and Citizens» in *Principles of European Constitutional Law: Revised Second Edition*, edited by Armin von Bogdandy and Jürgen Bast, Oxford: Hart Publishing, 2010, p. 701 and ff. This understanding of the legal nature of the European Union is further developed by Mário S. Barata, «A Natureza Jurídica da União Europeia Após o Tratado de Lisboa», *Boletim da Faculdade de Direito de Coimbra* 90 (2014): 263-313. [↑](#footnote-ref-16)
17. This understanding of the European Union is defended by Ingolf Pernice and this position is analysed by Ulrich Everling in «The European Union as a Federal Association of States and Citizens», p. 729 and ff; Ingolf Pernice, «The Treaty of Lisbon: Multilevel Constitutionalism in Action», p. 349 and ff. [↑](#footnote-ref-17)
18. German Federal Constitutional Court decision on the Lisbon Treaty, June 30, 2009, paragraphs 256, 329 and 330. [↑](#footnote-ref-18)
19. Piris, Jean-Claude, *The Lisbon Treaty: A Legal and Political Analysis*, Cambridge: Cambridge University Press, 2010, p. 110. [↑](#footnote-ref-19)
20. Malathouni, «Should I Stay or Should I go: The Sunset Clause as Self-Confidence or Suicide», p. 115. [↑](#footnote-ref-20)
21. See Fausto de Quadros, *Direito da União Europeia, 3ª edição*, Coimbra: Almedina, 2013, p. 447. [↑](#footnote-ref-21)
22. Lenaets and Nuffel, *European Union Law*, p. 99. [↑](#footnote-ref-22)
23. Herbst, Jochen, «Observations on the Right to Withdraw from the European Union: Who are the “Masters of the Treaties”?», *German Law Journal* 6 (11: 2005), p. 1757. [↑](#footnote-ref-23)
24. Herbst, «Observations on the Right to Withdraw from the European Union: Who are the “Masters of the Treaties”?», p. 1757. [↑](#footnote-ref-24)
25. See Hofmeister, «Should I Stay or Should I Go? – A Critical Analysis of the Right to Withdraw from the EU»,p. 594; and Raymomd J. Friel, «Secession from the European Union: Checking out of the Proverbial “Cockroach Motel”», *Fordham International Law Journal* 27 (January: 2004), p. 637. [↑](#footnote-ref-25)
26. See Homeister, «Should I Stay or Should I Go? – A Critical Analysis of the Right to Withdraw from the EU»,p. 594 and 595; Raymond Friel, «Providing a Constitutional Framework for Withdrawal from the EU: Article 59 of the Draft European Constitution», *International and Comparative Law Quarterly* 53 (April: 2004), p. 426 and 427. [↑](#footnote-ref-26)
27. Lazowski, Adam, «Withdrawal from the European Union and alternatives to membership», *European Law Review* 37 (5: 2012), p. 529 and 530. [↑](#footnote-ref-27)
28. Hillion, Christophe, «Accession and Withdrawal in the Law of the European Union» in *The Oxford Handbook of European Union Law*, edited by Anthony Arnull and Damien Chalmers, Oxford: Oxford University Press, 2015, p. 136. [↑](#footnote-ref-28)
29. Duarte, Maria Luísa, *Estudos de Direito da União e das Comunidades Europeias II*, Coimbra: Coimbra Editora, 2005, p. 433. [↑](#footnote-ref-29)
30. See Hofmeister, «Should I Stay or Should I Go? – A Critical Analysis of the Right to Withdraw from the EU», p. 593; and Dony, *Droit de l’Union européene*, p. 67. [↑](#footnote-ref-30)
31. Herbst, «Observations on the Right to Withdraw from the European Union: Who are the “Masters of the Treaties”?», p. 1758. [↑](#footnote-ref-31)
32. See Friel, «Secession from the European Union: Checking out of the Proverbial “Cockroach Motel”», p. 637. [↑](#footnote-ref-32)
33. Louis, «Le Droit de Retrait de L’Union Européene», p. 308. [↑](#footnote-ref-33)
34. See Alan Tatham, «Don´t mention Divorce at the Wedding: Darling!: EU Accession and Withdrawal after Lisbon» in *EU Law After Lisbon* edited by Andrea Biondi, Piet Eeckhout and Stefanie Ripley, Oxford: Oxford University Press, 2012, p. 151 and 152. [↑](#footnote-ref-34)
35. Friel, «Providing a Constitutional Framework for Withdrawal from the EU: Article 59 of the Draft European Constitution», p. 426. [↑](#footnote-ref-35)
36. Louis, «Le Droit de Retrait de L’Union Européene», p. 308. [↑](#footnote-ref-36)
37. Dougan, Michael, «The Treaty of Lisbon 2007: Winning Minds, not Hearts», *Common Market Law Review* 45 (2008), p. 688. [↑](#footnote-ref-37)
38. See Ladowski, «Withdrawal from the European Union and alternatives to membership», p. 531. [↑](#footnote-ref-38)
39. See Friel, «Providing a Constitutional Framework for Withdrawal from the EU: Article 59 of the Draft European Constitution», p. 425. [↑](#footnote-ref-39)
40. Wyrozumska, Anna, «Article 50 Voluntary Withdrawal from the Union» in *The Treaty on European Union (TEU): A Commentary*, edited by Hermann-Josef Blanke and Stelio Mangiamelli, Heidelberg: Springer, 2013, p. 1410. [↑](#footnote-ref-40)