INTRODUCTION

The UK Independence Party that ranked third largest in Britain in the June 2004 elections for the European Parliament, is committed to withdrawing the United Kingdom (UK) from the European Union (EU). No true novelty, since in the 1970s and 1980s the British Labour and Greek PASOK parties already campaigned on a ticket of withdrawal from what was then the European Economic Community (EEC). With the recent electoral bonanza of Eurosceptical parties across the EU, the 'withdrawal issue' has come to the limelight once again. And while this intention to withdraw remains at all times of a predominantly political, matter-of-fact-like nature, the fundamental question still is warranted whether under European law, the possibility for secession exists at all. Previous investigations into this matter have been conducted over the course of time. However, most of these are now outdated, as the legal framework of European integration evolved from EEC to EU in the 1990s. What is more, the status quo, therewith the status quaestionis, is soon set to alter more still. In June 2004, a Treaty establishing a Constitution for Europe (hereinafter: 'TCE', 'the Constitution' or 'the Constitutional Treaty') was agreed upon by the

THE EUROPEAN UNION ON THE ROAD TO A NEW LEGAL ORDER – THE CHANGING LEGALITY OF MEMBER STATE WITHDRAWAL

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EU Heads of State and Governments at the Intergovernmental Conference (IGC) in Brussels. It will be signed on 29 October 2004, and eventually enter into force after ratification by the twenty-five Member States in accordance with their domestic constitutional requirements. As the institutional framework for secession lies differently under this future regime, the legal perspective inevitably shifts once again. Moreover, one should take heed of the possibility that the quest for réfondation of the EU with this ‘new’ constitution so ambitiously launched by the Convention on the Future of Europe (the European Convention) in 2002, might in itself pose too great a challenge. It may well entail that those Member States unwilling to adopt the Constitution, be confronted with the withdrawal question, or need reconsider their affiliations all too soon. Thus, a survey of the legal feasibility of an ‘exit’ under the law in force may prove an exigency.

The present article seeks to address these issues in three sections. First comes a fresh and thorough assessment under the law as it stands today, i.e. from the perspective of the Treaty on European Union (EU Treaty) and the underlying Treaty establishing the European Community (EC Treaty), as amended by the Treaty of Amsterdam (ToA) and the Treaty of Nice (ToN). This is followed by a critical investigation of the law to come, as laid down in the Constitution finalised at the IGC. The triptych is rounded off with a prospective on some intricate questions on the legality of withdrawal connected to the imminent ratification-track of the Constitutional Treaty. The background thought is that any problems on the road ahead, i.e. on the path towards revision of the rule of

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3 The path of any current Member State towards alternative (e.g. associate) forms of membership will not be explored in depth, as I take the view that this can only be a valid course of action once a legal possibility for revoking full membership could be established. If the latter turns out to be impossible, the operation could only be ascribed validity if the decision would be sanctioned in a mutual agreement by all the Member States.

4 From investigation of the topic under the European Atomic Energy Community Treaty will be abstained, as its structure is to a large extent similar to the EC Treaty. It therefore bears no complications for the general analysis.

5 At the time of writing, the text of the Constitutional Treaty was not yet final as the formal signing by the plenipotentiaries of the Member States (29 October 2004) still had to take place. All excerpts in the present article stem from the text drafted by the European Convention, as amended by the Working Party of Legal Experts of the IGC and as agreed upon at the Brussels IGC summit of 17 and 18 June 2004. It is doc. CIG 87/04, Treaty Establishing a Constitution for Europe, released by the IGC Secretariat on 6 August 2004, and available on <http://ue.eu.int/igcpdf/en/04/cг877.04.pdf> (30 Oct. 2004).