Ratifying the EU-UK withdrawal deal  
State of play and possible scenarios

SUMMARY

On 14 November 2018, the European Union (EU) and the United Kingdom (UK) negotiators announced their approval of the legal agreement on the UK's withdrawal from the EU. At a special European Council meeting on 25 November 2018, EU leaders endorsed the draft withdrawal agreement, as well as the text of a non-binding political declaration setting out the framework for the future EU-UK relationship. While the process of approving the withdrawal deal (the agreement and the political declaration) began rapidly in both the UK and the EU, it immediately met with significant difficulties in the UK. In particular, the House of Commons' rejection of the withdrawal deal in the 'meaningful vote' of 15 January 2019, led to renewed UK attempts at renegotiation. Although the EU and the UK eventually agreed additional guarantees with respect to the Ireland/Northern Ireland backstop, the withdrawal deal was again voted down on 12 March 2019.

Faced with the prospect of a 'no deal exit' on 29 March 2019, the initial Brexit date, the UK government, as instructed by the House of Commons, eventually requested an extension to the Article 50 negotiating period. On 22 March, the European Council extended the UK's EU Membership until 22 May 2019, on the condition that the UK parliament approved the withdrawal agreement by 29 March. As the House of Commons rejected the withdrawal agreement for a third time, the new Brexit date was instead set, under that European Council decision, at 12 April 2019.

With a 'no deal' Brexit becoming a highly likely scenario, both sides stepped up their contingency planning. However, other outcomes remain possible, in particular a further Article 50 extension, given the UK Prime Minister's request of 5 April. The EU-27 are set to decide on this within the European Council on 10 April 2019, most likely on the basis of conditions set for the UK. While a parallel process for establishing a majority for an alternative solution to the negotiated deal is under way in Westminster, its outcome remains uncertain. Finally, although rejected by the government, the UK still has the option to unilaterally revoke its notification to withdraw from the EU, or to organise another referendum on the issue (the latter dependent on an extension).

Please see also the parallel Briefing, Brexit: Understanding the withdrawal agreement and political declaration, of March 2019. And visit the European Parliament homepage on Brexit negotiations.

In this Briefing
- Approval process in the European Union
- Approval process in the United Kingdom
- State of play
- What next?
- Planning for 'no deal'
- Annex – Timeline of possible outcomes
Introduction

While the approval process in the EU has advanced smoothly, the draft withdrawal agreement and political declaration on the framework for the future EU-UK relationship remained to be ratified by the UK at the end of March 2019, when the Article 50 TEU negotiating period was set to expire. Following the UK House of Commons’ rejection of the withdrawal deal on 15 January 2019, new guarantees on the Northern Ireland backstop were agreed. However, the deal was again rejected on 12 March 2019. Two days later, the House of Commons voted in favour of an Article 50 extension, having rejected a no deal scenario. The UK government requested an extension to 30 June 2019. However, the European Council favoured a shorter extension, to 12 April 2019, or until 22 May 2019 should the UK Parliament approve the withdrawal deal in the week of 29 March. As the withdrawal agreement was rejected a third time, UK exit from the EU is currently set for 12 April 2019.

To mitigate the expected major disruption of a no deal exit, both sides stepped up unilateral preparations. Despite the extension of the Article 50 period, the risk of a no deal scenario on 12 April 2019 has risen, as yet there is no stable UK Parliamentary majority to approve the deal.

Approval process in the European Union

Following the endorsement of the withdrawal deal in November 2018, EU-27 leaders instructed the EU institutions to proceed with the next steps for ratification. Consequently, the European Commission adopted two proposals on the signing and conclusion of the withdrawal agreement on 5 December 2018. On 11 January 2019, the Council, meeting in the Article 50 (EU-27 Ministers) format, adopted the decision on signing the agreement and approved the draft decision to conclude the agreement, which it forwarded to the European Parliament (EP) for consent. The Presidents of the European Council and the Commission clarified they were ‘prepared to sign the withdrawal agreement as soon as the meaningful vote has passed in the UK Parliament’.

Council Decision (EU) 2019/274 of 11 January 2019 to sign the withdrawal agreement contains four articles. The decision authorises the European Council and Commission Presidents to sign the agreement, on behalf of the EU, subject to its conclusion. Between its signature and entry into force, the EU will notify the parties to EU international agreements that the UK is to be treated as a Member State and therefore covered by those agreements during the transition period. Finally, Member States intending not to surrender their nationals to the UK under the European Arrest Warrant during the transition period had to notify the Commission and the Council of this by 15 February 2019.1

The draft Council decision to conclude the withdrawal agreement, to which Parliament must consent, includes provisions related to the division of competences and cooperation between the EU institutions in the implementation of the agreement. In particular, they establish how the EU will be represented and take decisions in the Joint Committee (tasked with managing the agreement), and how to implement certain provisions of the withdrawal agreement (e.g. conditions and procedure for authorising the UK to conclude international agreements in areas of EU exclusive competence during the transition period; conditions and procedure for authorising Ireland, Spain and Cyprus to enter into bilateral agreements with the UK, for the purpose of the Protocols annexed to the withdrawal agreement; granting the Commission implementing powers to establish a uniform format for documents issued by Member States attesting the resident status of UK nationals and their families etc.).

The Commission will represent the EU on the Joint Committee and the specialised committees (Member States may request to take part in pertinent discussions – particularly Ireland, Cyprus and Spain). EU positions in the Joint Committee giving rise to acts with legal effects are to be established according to Article 218(9) TFEU, whereby the Commission or EU High Representative proposes and Council decides. However, for decisions regarding the review of the Protocol on Ireland/Northern Ireland, or the extension of the transition period, Council and Commission must act according to European Council guidelines.

The EP is to be ‘immediately and fully informed, as provided for in Article 218(10) TFEU, on the basis of practical modalities of cooperation allowing it to exercise fully its prerogatives in accordance with the Treaties’. Furthermore, during the first five years after its entry into force, the Commission must ‘report annually to the European Parliament and to the Council on the implementation and application of the agreement’, in particular on citizens’ rights aspects. Also, Council must inform the EP of any authorisation it

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1. This note is not a substitute for a comprehensive analysis of the decision. It provides an overview of the legal framework and the major provisions of the decision. The full text of the decision should be consulted for a comprehensive understanding of its provisions.
Ratifying the EU-UK withdrawal deal

The draft decision to conclude the agreement was officially referred to the Committee on Constitutional Affairs (AFCO) on 30 January 2019. The previous month, an AFCO Brexit Consent Working Group was created, composed of the chair of the committee, the rapporteur and the shadow rapporteurs. Subject to Parliament’s consent, the Council may conclude the agreement by ‘super’ qualified majority (at least 72% of the participating Member States – 20 of the 27 – comprising at least 65% of their population), in accordance with Article 238(3)(b) TFEU.

Procedure in the European Parliament

Parliament gives its consent to a withdrawal agreement by a majority of votes cast (i.e. simple majority of Members present), according to Rule 82 of the EP rules of procedure. Quorum rules would have to be respected. Members of the European Parliament (MEPs) elected in the UK have the right to vote. The AFCO committee appointed the Chair of the Brexit Steering Group, the body coordinating Parliament’s approach to Brexit, Guy Verhofstadt, as rapporteur. The rapporteur must draw up a recommendation for Parliament on whether to approve or reject the act under consideration, i.e. the Council decision concluding the agreement. In addition, the committee may choose to draw up another report, including a motion for a non-legislative resolution, setting out the reasons why the EP should grant or withhold consent and making recommendations. No such resolution is currently planned. No amendments to the recommendation on consent are admissible, except when they aim to reverse the recommendation of the rapporteur (Rule 99 on the consent procedure). For reasons of expediency, based on EP Rule 53(1), committees wishing to give an opinion on the consent recommendation may do so through a letter from their respective chairs to the AFCO Chair. In plenary, there will be a single vote on the recommendation to approve or deny consent. The last plenary session of the current parliamentary term is scheduled to take place from 15 to 18 April 2019.

Approval process in the United Kingdom

The UK parliamentary approval process for the withdrawal agreement differs from the established procedures for ratifying international treaties. The UK Parliament must complete three steps before the UK can ratify the withdrawal agreement:

- approve the treaty by resolution (known as the 'meaningful vote');
- adopt legislation for the implementation of the withdrawal agreement; and
- complete the parliamentary consent procedure for the ratification of international treaties under the 2010 Constitutional Reform and Governance Act (CRAG).

Experts argue that the UK Parliament has gained its most significant involvement yet in treaty-making. Usually, Parliament has no role in the opening of negotiations or signature of international treaties, but intervenes only when required to pass legislation for the treaty’s implementation and/or at the ratification stage. Sometimes, Parliament’s approval for treaties as a condition for ratification was required through an Act of Parliament or through a resolution (non-statutory requirement). Setting a date by which a treaty must be ratified is also not usual practice.

However, the UK Parliament has been involved in the Brexit process since the beginning. Moreover, the withdrawal agreement is subject to all three types of approval, as a result of an evolving process. Firstly, in Miller, the UK Supreme Court ruled that an Act of Parliament was required to authorise the government to trigger Article 50. The UK Parliament subsequently passed the 2017 European Union (Notification of Withdrawal) Act. Parliament also passed the 2018 European Union (Withdrawal) Act, which repeals the 1972 European Communities Act (the domestic basis for UK membership) and makes provisions related to UK withdrawal. In particular it integrates EU legislation in force on exit day (with exceptions) into national legislation – ‘retained EU law’ – which may later be modified. Moreover, it set ‘exit day’ as 11.00 p.m. (24:00 CET) on 29 March 2019, although the government
could amend this. Significantly, the Act affirms the UK Parliament's power to approve the withdrawal agreement before it is signed, as a precondition to its signature and ratification.

The 'meaningful vote'

The requirement to subject the withdrawal deal to parliamentary approval is set by Section 13 of the EU (Withdrawal) Act. Ratification of the withdrawal agreement is subject to the following steps:

- the government introduces three documents in both Houses of Parliament: a written statement that political agreement has been reached; and copies of the negotiated withdrawal agreement and the political declaration;
- a House of Commons resolution (simple majority) approves the withdrawal agreement and the political declaration on a motion moved by the government;
- the House of Lords holds a debate on the motion (no vote required);
- Parliament passes legislation implementing the withdrawal treaty domestically;
- the withdrawal agreement complies with Part 2 of the CRAG Act on ratifying international treaties.

The first three steps above constitute the meaningful vote, which should take place, if possible, before the European Parliament gives consent. Should the House of Commons reject the withdrawal deal, the government must make a statement, setting out the proposed next steps in relation to the Brexit negotiations, within 21 days from the day of the negative vote; then, the government must move a motion in neutral terms that the House of Commons has considered the statement, within seven sitting days of that statement; a motion must also be introduced in the Lords, within seven sitting days. However, nothing in Section 13 prevents more than one 'meaningful vote' being held.

The EU withdrawal agreement bill

Should a Commons 'meaningful vote' approve the deal, the government must introduce a bill to implement the withdrawal agreement in domestic legislation. This must provide for enforcement of the agreement, direct effect of certain provisions, etc. It must also suspend certain effects of the EU (Withdrawal) Act 2018 during the transition period. The implementing act is required both as a condition for ratification (Section 13 of the 2018 Act), and as a statutory requirement giving the government the power to implement provisions to come into force on or before exit day (Section 9 of the 2018 Act). As an act of Parliament, the normal procedure applies, involving three readings in both Houses; however, in the House of Lords, the government cannot control the substance and number of amendments, or the timing; while the Lords cannot veto a bill, it can delay it for a year.

The UK government has not yet introduced the EU (Withdrawal Agreement) Bill, although it could theoretically do so at any moment, regardless of the result of the meaningful vote. Experts underline that the bill could include a clause removing the need for a separate motion of approval, therefore allowing the ratification of the withdrawal deal, notwithstanding the provisions of Section 13. Conversely, the bill offers another chance to reject the deal, even after approval in a 'meaningful vote'. In this context, EU representatives underline the need for a stable majority in the UK Parliament to ensure not only approval of the deal in a 'meaningful vote', but also of the implementing legislation.

Ratification under the Constitutional Reform and Governance Act

Under Part 2 of the CRAG Act 2010, government may ratify a treaty if the House of Commons does not object, although both Houses must consider the treaty. A period of 21 sitting days must be observed after government presents the text of the treaty to Parliament. Should the Commons object to ratification, the government must make a statement, and a further 21 sitting days must be observed. This may be repeated indefinitely (although this would be unprecedented), with Parliament effectively blocking ratification. However, as government normally controls parliamentary business, opportunities to debate and vote on treaties are limited.
Regarding the withdrawal agreement, experts underline that if there were no time for the required 21 sitting days, the government could include a provision in the EU withdrawal agreement bill to say its passage fulfils the obligations in the CRAG Act. Alternatively, the CRAG Act itself (Section 22) provides that, in exceptional cases, the government may proceed to ratification without the requirements of the CRAG being met, although these cannot be waived once either House has decided against ratification. The UK Prime Minister stated that 'where there is insufficient time remaining following a successful meaningful vote, we will make provision in the withdrawal agreement bill, with Parliament's consent, to ensure that we are able to ratify on time'.

State of play

Following the UK Prime Minister's required written statement that agreement had been reached on UK withdrawal, launching the 'meaningful vote' procedure, both Houses began scheduled five-day debates on the deal on 4 December 2018. Invoking 'widespread and deep concern' about the Northern Ireland backstop, the Prime Minister postponed the 'meaningful' vote from 11 December 2018, and committed to seek further 'legal' reassurances regarding the temporary nature of the backstop. The government also made unilateral commitments to Northern Ireland.

The European Council conclusions of 13 December 2018 state that the withdrawal agreement was not open for renegotiation, but expressed firm determination 'that the backstop will not need to be triggered', and if it is, 'it would apply temporarily, unless and until it is superseded by a subsequent agreement that ensures that a hard border is avoided'. While welcoming the conclusions, the UK government nevertheless sought 'further political and legal assurances' in January 2019.

The debate on the deal resumed in the UK Parliament on 9 January 2019, with the vote scheduled for 15 January. Presidents Tusk and Juncker wrote to Prime Minister May before the vote to provide further clarifications on the backstop and the future relationship negotiations, to 'facilitate the next steps in the process.' Nevertheless, the Commons overwhelmingly rejected the government's motion to approve the withdrawal deal (432 to 202). Groups rejected the deal for different reasons:

- seeking a general election, the Labour Party voted against the government, arguing that the political declaration does not commit to a permanent customs union and to protecting workers' rights and the environment;
- arguing that the backstop would trap the UK in a customs union with the EU indefinitely, impeding a future independent UK trade policy, around 60 hard-line Conservative Party Brexit supporters (the European Research Group, ERG), voted against;
- rejecting the backstop, the 10 Democratic Unionist Party (DUP) MPs argued it would lead to different treatment of Northern Ireland and the rest of the UK;
- preferring to remain in the EU's single market and customs union, others rejected the political declaration as an unclear future destination;
- supporting a people's vote, some object to any deal taking the UK out of the EU.

As a result of the vote, the UK Prime Minister set out the government's approach in a statement on 21 January 2019. However the statement contained no major changes, nor a Plan B. The Prime Minister rejected a second referendum and a people's vote on the deal; refused to rule out 'no deal', and refused an extension to Article 50, or to revoke UK notification to leave the EU. The government nonetheless announced the waiving of the £65 fee for EU citizens applying for settled status in the UK.

EU reactions emphasised the fair and balanced nature of the deal, as the best possible under the circumstances. EU Chief Negotiator, Michel Barnier, underlined that the transition period depended on ratifying the withdrawal deal, and that the EU would not negotiate mini-deals to mitigate 'no deal' disruption, but would be ready to 'rework the content and the level of ambition of the political declaration if the UK shifts its red lines'. The EP Brexit Steering Group confirmed readiness to consider a 'much more ambitious future relationship, should the UK consider this', while rejecting the renegotiation of the withdrawal agreement particularly the backstop: 'without such an “all-weather” backstop-insurance, the EP will not give its consent to the Withdrawal Agreement.'
On 29 January 2019, the Commons approved the motion on the government's 'way forward' statement, as well as two (of seven selected by the Speaker) amendments. The first, a non-binding amendment, called on the government to rule out leaving the EU without a deal, without mentioning a timeframe or procedural steps. The second amendment (supported by the government) required that 'the Northern Ireland backstop to be replaced with alternative arrangements to avoid a hard border'. The Prime Minister welcomed the results and committed to seek legally binding changes on the backstop. This vote concluded the statutory role of the UK Parliament under Section 13 of the Withdrawal Act 2018. The 'meaningful vote' procedure must start anew, with a new government motion to approve the deal brought before Parliament.

On 30 January, both President Juncker and Michel Barnier restated that the withdrawal agreement would not be renegotiated; committed to start work immediately after the signing of the agreement to identify alternative arrangements to the backstop; and to rework the parameters of the future relationship beyond a free trade area, should the UK position evolve.

In her statement of 26 February, the UK Prime Minister made three commitments, including an essential concession on an extension to the Article 50 negotiating period:

- to hold a second meaningful vote on the withdrawal deal by 12 March 2019 at the latest;
- if, by 12 March, the government either had not organised a meaningful vote or had lost that vote, then by 13 March the House of Commons would vote on whether it supports leaving the EU without a withdrawal deal on 29 March 2019.
- if the Commons rejected both the withdrawal deal and leaving the EU without a deal, by 14 March, a vote would be held on whether the UK should seek a short extension to Article 50 negotiations. If approved, the government would seek the EU’s agreement and introduce legislation to change the exit date set in the Withdrawal Act 2018.

On 27 February, the Commons supported this approach, including an amendment calling on the government to seek a joint EU-UK commitment to adopt the citizens' rights provisions in the withdrawal agreement prior to Brexit, regardless of the outcome of negotiations. In the meantime, discussions between the UK and the EU focused on:

- guarantees as to the temporary nature of the backstop, including legal assurances;
- alternative arrangements to replace the backstop;
- possible changes to the political declaration to increase confidence that both sides aim to conclude their future partnership as soon as possible.

The EU Chief Negotiator stated that negotiation efforts aimed to enshrine the 'commitment to limit the backstop through an agreement on the future relationship, in the form of an interpretative document', while reaffirming EU rejection of a time-limited backstop or a unilateral exit right. An agreement was reached on 11 March 2019, consisting of a legally binding interpretative instrument relating to the withdrawal agreement and a joint statement supplementing the political declaration.

The interpretative instrument confirms the guarantees in the Tusk-Juncker joint letter of January 2019 and stresses the parties' fulfilment in good faith of the obligations arising from the withdrawal agreement, in particular with regard to the Protocol on Ireland/Northern Ireland. The parties reaffirm their commitment to use their best endeavours to start negotiations as soon as possible and conclude, by 30 December 2020, an agreement that supersedes in part or in whole the Protocol, including replacing with alternative arrangements those elements related to customs and regulatory alignment in goods. Efforts would be redoubled, if negotiations are not concluded within one year of the UK leaving the EU. The withdrawal agreement dispute settlement mechanism (independent arbitration panel) can be triggered by either party considering the other is acting in breach of good faith obligations, with the objective of applying the Protocol indefinitely. Persistent lack of compliance with the panel's ruling may enable the aggrieved party to unilaterally suspend its obligations under the Protocol, unless and until compliance is assured. The joint statement on the political declaration reaffirms the parties' intention to start negotiations on the future relationship agreements speedily, which could be applied provisionally if national ratification is not
concluded at the end of the transition period. Moreover, a specific negotiating track will be established with a view to developing alternative arrangements to ensure the Protocol on Ireland/Northern Ireland will not apply at all. Besides the two documents, a unilateral declaration by the UK government sets out the UK’s understanding of the effect of some provisions in the Protocol.

Following this new agreement, the UK government organised a debate and second meaningful vote on 12 March 2019. The withdrawal deal was again defeated (by 149 votes), paving the way for other votes: the Commons first rejected UK exit without a withdrawal deal in all circumstances and then, on 14 March 2019, voted in favour of extending Article 50. The EU reacted strongly to the second Commons defeat of the deal, underlining that talks had ended and that no extension would be granted unless the UK came up with a credible strategy based on a clear majority in parliament.

The UK government intended to hold a third meaningful vote on the deal before the European Council met on 21 March 2019, upon which the request for an extension would depend: the UK would ask for a short extension to 30 June 2019, to fulfil the next steps for ratification if the withdrawal deal was approved by 21 March. However, a longer extension would prove necessary if the deal was rejected, to allow the UK time to decide its course of action, and would entail UK participation in the European elections. Due to lack of a majority, and partly due to the Commons Speaker’s ruling on 18 March 2019 that the government could not legitimately resubmit ‘the same proposition or substantially the same proposition’ as that already rejected, the ‘meaningful vote’ did not take place. On 20 March 2019, the UK Prime Minister officially requested an extension to 30 June, to hold a further vote, and if positive, to pass implementing legislation.

At the 21 March 2019 European Council meeting, the UK Prime Minister reportedly again failed to indicate an alternative plan should the deal be rejected once more. Because a request for extension was already considered a highly likely scenario, some EU leaders had stated that the purpose and length of an extension should be clearly expressed by the UK, as the EU wished to avoid prolonged uncertainty. Moreover, EU representatives had emphasised that the UK would have to comply with certain legal obligations during the extension period, whether short or longer, e.g. contributions to the EU budget or holding European elections (23-26 May 2019). In its conclusions, confirmed by the subsequent decision of 22 March 2018 (and in agreement with the UK), the European Council agreed to an extension to 22 May 2019, if the UK Parliament approved the withdrawal agreement in the week of 29 March. If not, the extension would run until 12 April 2019 (the deadline for the UK to give notice of holding European Parliament elections), unless the UK indicated a way forward for consideration by the European Council before then. The European Council decision further states that should the UK still be a Member State on 23-26 May 2019, it is obliged to hold European elections. The EU-27 also excluded re-opening of the withdrawal agreement during the extension period; however, the EU would consider changes to the political declaration (either by increasing its binding character or by agreeing a closer future relationship than that currently outlined).

Article 50 extension and May 2019 European Parliament elections

EP elections are scheduled for 23-26 May 2019. Prior to the European Council decision on extending Article 50, some commentators assumed an extension would be granted for a few weeks at most, to avoid UK participation. President Juncker wrote to President Tusk stating that, if the UK has not left the EU by 26 May 2019, it will be legally required to hold elections. Other experts consider that should the UK still be an EU Member State, not holding EP elections would be a violation of the voting rights of British nationals (and of EU nationals resident in the UK) under EU citizenship rules, leaving the UK open to prosecution. Conversely, as the new European Parliament is constituted on 2 July 2019, others argue that an extension to 1 July 2019 would allow for some flexibility. Although the EP could legitimately be constituted on 2 July without UK Members, extension beyond 2 July would be complicated legally and politically. With the 22 March 2019 European Council decision, it became clear the EU considered the UK had a legal obligation to conduct EP elections should it remain a Member State at the end of May 2019. Indeed Theresa May’s 5 April request for a further extension acknowledges this obligation, and commits to preparing for the elections.

The EU Treaties and the 1976 Direct Elections Act (considered EU primary law) would have to be amended to exempt an EU Member State from holding European elections. Treaty revision (Article 48 TEU) requires
ratification by all EU Member States. European Council Decision 2018/937 establishing the EP's composition, in force since July 2018, provides for both scenarios: the UK as a third country or a Member State on the date of the EP elections. In the latter case, the EP composition would remain unchanged (i.e. 751 Members, including the 76 UK seats), according to European Council Decision 2013/312/EU. When UK withdrawal takes effect, the 2018 European Council decision will apply: a maximum of 705 Members, with the number of Members per Member State modified accordingly. Some Member States would therefore then have to send additional representatives to the EP. UK elections to the EP must be announced at the latest by 12 April 2019.

On 25 March 2019, the UK government submitted the statutory instruments necessary to change exit day in UK legislation, approved by the Commons two days later. The UK government also announced it would hold another vote by 29 March 2019 to avail itself of the possibility of an extension to 22 May 2019. To comply with the Speaker's decision of 18 March 2019, ruling out a vote on a substantially similar motion, and emphasising the European Council decision of 22 March 2019, whereby the Commons needed to approve the withdrawal agreement in order to trigger the longer extension, the government had a vote on the withdrawal agreement alone (including the 'Strasbourg package', but not the political declaration), on 29 March 2019. While this did not meet the Section 13 requirements of a 'meaningful vote', the government felt a positive vote would have allowed a move to the next step of the process. Compliance with Section 13 could be ensured later, possibly through the future EU (withdrawal agreement) bill. However, the Commons rejected the withdrawal agreement by a margin of 58 votes, activating the extension to 12 April 2019.

Indicative votes process

The idea of holding indicative votes, which the UK government has refused to endorse so far, was proposed to identify an option(s) that could command the support of a majority of MPs. On 25 March 2019, an amendment passed allowing the Commons (rather than the government), to take control of the order of business. The Commons consequently debated and voted on a series of alternative ways forward on 27 March 2019. While none of the options commanded a majority, some gained significant support. The indicative vote process continued on 1 April 2019, without a majority emerging for any of the four options considered (customs union, 'common market 2.0', a confirmatory public vote, and revoking the Article 50 notification). A third session on 3 April 2019 saw the adoption by the Commons of a bill against the risk of no deal (now in the House of Lords). Other indicative votes debates are not excluded, including the option to pass legislation directing the government to implement the outcome; however, any such act would also need approval in the Lords. On every occasion, the government has voiced concern about the precedent and constitutional implications and refuses to commit to implementing the outcome of (non-binding) indicative votes, arguing the alternative would need to be deliverable, negotiable with the EU, and must respect the referendum result.

What next?

Following the rejection of the withdrawal agreement on 29 March, the new 'cliff-edge' is set for 12 April 2019. Although a special European Council (Article 50) meeting is planned for 10 April 2019 to consider further UK proposals on a way forward, UK exit from the EU without a withdrawal deal has been considered a very likely scenario. It is also accepted in the UK that the current legal default position is a 'no deal' exit. The government has indicated its continued support for the negotiated withdrawal deal, leading to the assumption that a new 'meaningful vote' is intended. However, in a significant change in approach, on 2 April 2019, the UK Prime Minister offered to hold talks with the Labour opposition leader, opening possibilities of a withdrawal deal that could include a closer future relationship with the EU, although without modifying the withdrawal agreement. A cross-party consensus, if acceptable to the EU, could easily be reflected through changes to the political declaration, in particular since Labour has insisted on a permanent customs union with the EU and close alignment with the single market. Alternatively, if these discussions fail, the Prime Minister would hold binding votes on various options in parliament, including the current deal. In this context, a customs union with the EU (Labour's preferred route and the least-opposed option in the indicative votes) received positive EU feedback. A further (short) Article 50 extension (until 22 May) would be needed in any case, if a deal is approved by 12 April 2019, as confirmed by the Commission
President. The UK Prime Minister announced the \textit{intention} to seek a further extension of Article 50, 'one that is as short as possible and which ends when we pass a deal'. Her letter of 5 April to Donald Tusk indicates the desire to extend only until 30 June, and even, if circumstances allow, for the UK to leave before the European elections. Nonetheless, she acknowledges the UK's obligation to plan for and hold those elections. A longer Article 50 extension is not explicitly excluded in her letter, however. Ultimately, unilaterally revoking the Article 50 notification and remaining in the EU remains an option, albeit unlikely in the current circumstances.

Further extension of the Article 50 negotiating period

As announced by the Prime Minister, the UK now seeks a new short extension. The Commission had confirmed the EU's \textit{readiness} to grant a short extension until 22 May 2019, if the withdrawal deal were to be approved by 12 April. However, the chances of this are now slim, so the prospect of a longer extension, as well as the question of its purpose, is now centre stage. It is assumed – and indeed Donald Tusk has \textit{reportedly} indicated this is his preference – that the EU would support a longer extension (up to the end of 2019, to 31 March 2020 or even longer), perhaps allowing the UK to organise a general election or a public vote, although with \textit{conditions}, for example, besides a commitment to participate in the EP elections, assurances that the UK would not obstruct EU discussions on issues such as the next multiannual budget. Theresa May has consistently opposed a long delay and the EU itself would prefer to avoid it, as it would prolong \textit{uncertainty} and require continued time and resources devoted to Brexit.

Second referendum or 'people's vote'

A second referendum on Brexit or a \textit{people's vote} on the withdrawal deal are also proposed to break the political impasse. The UK Prime Minister has repeatedly stated that the \textit{results} of the first referendum must be implemented, as a second referendum 'could damage social cohesion by undermining faith in our democracy'. Conversely, \textit{second vote} advocates argue that voters were misinformed during the 2016 referendum about the consequences of leaving the EU, and therefore deserve a \textit{chance} to express their views again. While some smaller parties in the UK Parliament have voiced support for a second referendum (e.g. the SNP, the \textit{Liberal Democrats}), the Labour Party has been ambivalent about \textit{backing} a vote. While a parliamentary \textit{majority} in favour of a second vote is yet to emerge, the option for a confirmatory public vote on a withdrawal deal gathered the most votes in the 'indicative votes' process. Moreover, opinion polls are \textit{inconclusive} as to whether the public supports a second referendum. In addition, \textit{polls} on the question of remaining or leaving the EU find little change among supporters of remain or leave, although overall support appears to have \textit{shifted} towards remaining, e.g. a \textit{petition} to revoke Article 50 has gathered over 6 million signatures.

Furthermore, a series of legislative \textit{requirements} are necessary to hold a second referendum. Parliament must legislate for a second referendum either through a specific Act of Parliament or by including the necessary provisions in another Act of Parliament. Even if legislation is passed quickly, other requirements must also be respected, in terms of testing the questions to be put to vote, adopting detailed rules for holding the referendum, including campaigning rules, and observing a 10-week minimum campaign period. In total, an estimated 22 weeks could pass between a decision to hold a referendum and polling day (requiring a commensurate extension of Article 50 TEU). Finally, a series of controversial \textit{issues} surround a second poll. Above all, there is no consensus on the \textit{question} to put to voters, the choice of which – ultimately a political decision – would have significant implications for the referendum's legitimacy and respect of its outcome.

Revoking the withdrawal notification

Another scenario is for the UK to revoke its withdrawal notification and remain in the EU. Until recently, unilateral revocation has been a \textit{controversial issue}, as Article 50 TEU is silent on the matter. Many \textit{experts} and the EU institutions have opposed such a unilateral right, without the agreement of the EU-27. Nevertheless, the Court of Justice of the EU (CJEU) takes a different \textit{view}. In its \textit{ruling}
of 10 December 2018, the CJEU confirmed the UK’s unilateral right to revoke the Article 50 notification, as long as a withdrawal agreement has not entered into force or, if no withdrawal agreement has been concluded, as long as the two-year Article 50 period, including extension(s), has not expired. The decision to revoke must be ‘unequivocal and unconditional’, addressed in writing to the European Council, and taken in accordance with the UK’s constitutional requirements. The withdrawal process would then end and the UK would continue its EU membership on the same terms as it currently enjoys. In the UK, such a decision would likely require primary legislation, mirroring the adoption of the European Union (Notification of Withdrawal) Act 2017. Revoking Article 50 notification was considered by the Commons during the ‘indicative votes’ process, when some argued that the withdrawal process could be reinitiated following revocation.

Planning for 'no deal'

EU preparedness and contingency planning

Since April 2017, the European Council has called upon EU institutions, Member States and all stakeholders to prepare for the consequences of UK withdrawal ‘at all levels and for all outcomes’. Two Commission communications, (July and November 2018), set out the measures necessary to prepare for the disruption UK withdrawal will cause, both with an agreement in force (preparedness) and in the event of ‘no deal’ (contingency). Another communication (December 2018) focuses on implementing the necessary measures both at EU and Member State level in a ‘no deal’ scenario. The EU has insisted contingency measures are unilateral, temporary (they should not last beyond 2019), and aimed at mitigating the negative impact on the EU-27 (as such they can replicate neither the content of the withdrawal agreement, nor recreate the benefits of EU membership); they are not mini-deals, as they have not been negotiated with the UK. Against this background, the Commission identified sectoral legislative measures to be adapted, some based on conditions of reciprocity. Besides this legislative work, 91 ‘no deal’ notices have been sent to stakeholders.

On 25 March 2019, the European Commission announced the EU had completed preparations for a possible ‘no deal’ scenario on 12 April 2019. All 19 relevant legislative proposals have been adopted or agreed by the European Parliament and Council, except one, which is set to be finalised in time. The laws adopted include measures on: financial services (two equivalence decisions – C/2018/9138 and C(2018)9139); air connectivity and safety; road and rail transport; ship inspections; fishing rights and compensation; continuation of the PEACE programme on the island of Ireland; energy efficiency; amending the Connecting Europe Facility; Erasmus+ programme; social security entitlements; relocation of the European Banking Authority and the European Medicines Agency; amending EU type approval legislation on motor vehicles; authorising the UK to export dual-use items to the EU and visa exemption for UK nationals. The remaining proposal, on implementation of the 2019 EU budget would continue payments to UK beneficiaries, provided the UK continues to pay the contributions to which it has committed (around €10.2 billion) and accepts the necessary controls and audits. The UK would have to indicate its acceptance by a deadline (18 April in the draft).

Discussions among the EU-27 continue on the EU strategy, in particular regarding future talks with the UK following ‘no deal’ and the expiry of the contingency measures. The three key issues in the withdrawal agreement: citizens’ rights; UK financial obligations under the EU financial framework; and Northern Ireland, would remain preconditions for further EU-UK talks.

UK ‘No deal’ preparations

UK efforts to prepare for a no deal scenario on 29 March 2019 encompassed some 106 technical notices to stakeholders, citizens and businesses, including contacting around 145 000 businesses who trade with the EU, passing legislation (primary and secondary), and addressing budgetary and staffing implications. The UK government’s technical notices concern sectors such as agriculture, imports and exports, labelling and safety of products, regulation of medicines, intellectual property rights, EU-funded programmes and the government’s guarantees to UK beneficiaries etc. A paper
Ratifying the EU-UK withdrawal deal

on citizens' rights sets out the government's offer to EU citizens living in the UK, in a no deal situation. The government also announced a temporary tariff regime for no deal, (up to 12 months). Regarding legislation for no deal, the UK Parliament passed a series of bills. Besides the Withdrawal Act 2018, other acts give the UK power to establish its own regime in the areas of sanctions policy, customs, and nuclear safeguards. However, the parliamentary process is ongoing for other bills, e.g. on trade, agriculture, fisheries, immigration, financial services, environmental governance. Doubts were also expressed about the government's capacity to pass all its secondary legislation in time for exit day. Estimates point to 500 to 600 statutory instruments (SIs), of which the government proposed 505 and 382 (76 %) had been passed by 29 March 2019. On 28 March 2019, the Leader of the House stated that all SIs needed for exit day 'had been dealt with appropriately'.

Overall, UK government readiness for no deal has been assessed as limited. The Institute for Government concluded in January 2019 that, out of 11 areas evaluated, the government will be ready for no deal only as regards funding for UK beneficiaries of EU funds. Its own assessment of 26 February 2019 stated that departments were on track 'for just under 85 % of no deal projects but, within that, on track for just over two thirds of the most critical projects'. The paper also admits the UK is unable to ensure continuity regarding a series of EU agreements (including around 40 trade agreements) with third countries, and mentions the areas where no deal would significantly impact the UK: border and customs; services; data flows; and citizens' rights.

MAIN REFERENCES

ENDNOTES

1 This option is provided by Article 185 of the withdrawal agreement. Germany has reportedly made such a notification.

2 Further information may be contained in a Council document of 10 January 2019, XT 21118/2018 REV 1 (not yet public).

3 Motions in neutral terms simply ask Parliament to consider a topic. They are non-amendable in principle, but the House can dis-apply the relevant Standing Order. Please see the Institute of Government’s explanatory note on Motions.

4 The President of the European Council confirmed that European Council conclusions have legal value in the EU commensurate to the European Council’s role. The European Commission President committed to start formal negotiations on the future relationship as soon as possible to have the agreements in place by the end of the transition.

5 On 16 January 2019, the government survived a vote of no confidence, tabled by the Labour opposition (325 to 306).

6 On 4 March 2019, the UK Secretary of State for Exiting the EU sent a letter to the EU Chief Negotiator inquiring as to EU views on the proposal to ring-fence citizens' rights, regardless of the ratification of the withdrawal agreement.


8 European Council guidelines of 29 April 2017; guidelines of 23 March 2018; and conclusions, 29 June 2018.

9 See the complete list of agreements that would be in place on exit day, as of 7 March 2019.

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Annex – Timeline of possible outcomes