The revised Brexit deal
What has changed and next steps?

SUMMARY

Brexit talks between the EU and the UK had reached a standstill in spring 2019, with the House of Commons refusing to vote in favour of the negotiated withdrawal agreement, including a Protocol on Ireland/Northern Ireland. The new UK government led by Boris Johnson, who came into office on 24 July, made a priority of finalising preparations for leaving the EU without a deal on 31 October 2019, unless the EU was willing to renounce the ‘backstop’ included in the Protocol. However, the EU continued to restate its opposition to removing what it considered a legally operational safety net that would prevent a future hard border on the island of Ireland, in the absence of concrete proposals from the UK. At the beginning of October 2019, the UK government sent its proposals on revising the above-mentioned protocol, which were received with a measure of concern by the EU and other stakeholders. Discussions aimed at bridging the gap between the UK and EU positions were stepped up and, after a series of concessions, the EU and UK announced they had reached a revised withdrawal agreement, which was then immediately endorsed by the European Council on 17 October 2019.

With only days to go until 31 October 2019, the date on which the UK is set to leave the EU, completing the ratification procedures to allow the withdrawal agreement’s entry into force on 1 November is going to be a challenge. Whereas on the EU side no major obstacles are foreseen, in the UK, the House of Commons decided on 19 October to withhold approval for the revised deal until Parliament passes the related implementing legislation. Required by law to send the EU a request for an extension of the Article 50 period until 31 January 2020, the UK Prime Minister is nonetheless still aiming to fulfil all the necessary steps for the ratification of the withdrawal agreement to allow its entry into force on 1 November. This is also the stated aim of the European Union, although if the European Council were to decide in favour of granting an Article 50 extension, following the UK request, that decision would have to be taken before the end of October.
Introduction

On 11 April 2019, at the United Kingdom's request and with its approval, the European Council (Article 50) adopted the decision to extend (for a second time) the negotiating period, with a view to concluding a withdrawal agreement, until 31 October 2019 (or earlier, were an agreement to be ratified in the meantime). During the extension and respecting its legal obligations as an EU Member State, the UK organised elections to the European Parliament on 23 May 2019. On 24 May 2019, despite her fresh proposals to UK parliamentarians on a 'new Brexit deal' – a 10-point offering giving a series of guarantees on social and environmental standards and greater involvement of the UK parliament in the negotiations on the future EU-UK relationship – the UK Prime Minister, Theresa May, announced her resignation as leader of the Conservative party with effect as of 7 June 2019. The ensuing leadership contest in the Conservative party led to the victory and subsequent appointment of Boris Johnson as the new UK Prime Minister, on 24 July 2019.

Contacts between EU and UK officials over Brexit resumed at the end of July. The stated goal of the new UK Prime Minister was to renegotiate the withdrawal agreement, in particular to eliminate the backstop provisions in the Protocol on Ireland/Northern Ireland annexed to the agreement; failing which the UK would leave the EU on 31 October 2019 without a deal, as the government was intent on not asking for a further extension to the Article 50 process. Following repeated EU demands for concrete and realistic UK proposals to this end, the UK government finally published its proposals for an amended Protocol on Ireland/Northern Ireland on 2 October 2019. The adoption in September 2019 by the UK Parliament of the European Union (Withdrawal) (No 2) Act 2019 (or the Benn Act) might also have motivated the UK government to make concrete proposals to the EU. The Benn Act obliges the UK government to send the EU a request for a further extension up to 31 January 2020, if by 19 October 2019, the House of Commons has not approved either 1) a withdrawal agreement or 2) a motion to leave the EU without a deal.

Prior to the European Council meeting on 17-18 October 2019, where Brexit was on the agenda, efforts to bridge the gap between the new UK proposals and the EU position intensified. Following certain concessions from the UK government, the European Council was able to endorse a revised withdrawal deal on 17 October 2019, which contains a revised Protocol on Ireland/Northern Ireland, as well some modifications to the Political Declaration on the future EU-UK relationship. EU Heads of State or Government also expressed their intention to finalise the ratification of the deal in time for its entry into force on 1 November 2019.

The first challenge for the revised deal was to garner a majority in the House of Commons on 19 October. As UK parliamentarians voted to delay approval to the deal until the implementing legislation was passed, the UK was then legally obliged to request an extension until 31 January 2020 of the Article 50 period. While the EU-27 have yet to take a decision on the extension request, they are still hoping the UK Parliament will be able to approve the revised deal and pass the implementing act before 31 October. The EU institutions are at the same time continuing the procedures for the ratification of the withdrawal agreement, for its entry into force on 1 November. Should the UK not be able to complete the ratification process in time, another (extraordinary) European Council meeting might be convened before 31 October 2019 to discuss the way forward and possibly to decide to grant a third Article 50 extension, although the latter would not necessarily be for the period requested by the UK, and indeed the European Council might attach conditions to such an extension.

Against this backdrop, although a no-deal scenario seems less likely for now, it could still come back onto the agenda at the end of any new extension period.

UK attempts to renegotiate the 'backstop'

Immediately after taking up his duties as the UK’s new prime minister, Boris Johnson committed to take the UK out of the EU on 31 October. He refused to rule out a no-deal exit, while stating that
discussions with the EU would continue with a view to renegotiating the withdrawal agreement. In this context, one particular demand made of the EU was to eliminate the ‘backstop’ contained in the existing Protocol on Ireland/Northern Ireland; some changes to the Political Declaration on future EU-UK relations were also sought. Furthermore, the new UK government announced that no-deal preparations would intensify, with an extra £2.1 billion pledged for this purpose (for a total of £8 billion).

In response, the EU emphasised that the withdrawal agreement, ‘the only possible agreement’, would not be renegotiated, but that it would consider discussing the Political Declaration on future EU-UK relations. The EU also reiterated its position regarding the backstop, namely that the backstop or a safety net was necessary in order to preserve the Good Friday/Belfast Agreement and the integrity of the EU single market. Nevertheless, although removal of the backstop would be unacceptable, the EU was not ruling out further talks if the UK came up with concrete proposals.

A brief history of the backstop

After Brexit, Northern Ireland will be the only part of the UK to share a land border with an EU Member State: what is currently an invisible border between Northern Ireland and Ireland will become an external EU border. Given the UK’s position that, after Brexit, it will not seek to remain part of the EU's customs union or single market, the EU has been confronted with the need, on the one hand, to introduce and enforce a customs border to manage future differences in customs regimes and customs procedures to control the compliance of goods in transit, and, on the other, to check products entering the EU market from Northern Ireland (e.g. sanitary and phytosanitary checks) for compliance with EU standards and regulations. Nevertheless, keeping an open border between Northern Ireland and Ireland is essential to the peace process, which has established consultation and cooperation between the island’s North and South on matters of common interest, including the development of joint policies. Since the beginning of the talks, both the UK and the EU have recognised the unique circumstances of Northern Ireland and have committed to: avoiding the introduction of a hard border on the island of Ireland after Brexit; and to respecting the 1998 Good Friday/Belfast Agreement in full.

Against this backdrop, the backstop originated in the December 2017 Joint Report from EU and UK negotiators. Its paragraph 49 contains three scenarios: 1) first, a solution to avoid a hard border to trade in goods on the island of Ireland and any physical infrastructure or related checks would be achieved in the context of the future EU-UK relationship; 2) should this scenario prove impossible, the UK would propose specific solutions for Northern Ireland; 3) failing agreement on these, the UK committed to ‘full alignment of those rules of the internal market and the customs union which now or in the future support North-South cooperation, the all-island economy and the protection of the 1998 Agreement’.

The first legal draft of the Withdrawal Agreement of March 2018 contained a Protocol on Ireland/Northern Ireland which, among other provisions relating to North-South cooperation, included the third of these scenarios as the backstop option to apply as of the end of the transition period envisaged in the agreement. More specifically, the European Commission proposed the

The initial EU ‘backstop’ proposal

Source: European Commission, 11 June 2018.
establishment of a 'common regulatory area comprising the Union and the United Kingdom in respect of Northern Ireland', which would have essentially kept Northern Ireland in the EU's customs union and guaranteed Northern Ireland's regulatory alignment with the relevant EU single market rules, unless and until another solution was found.

The UK rejected this plan, which would de facto have instituted a customs border down the Irish Sea, an absolute red line for the Democratic Unionist Party (DUP), which supported Theresa May's government. The UK government subsequently came up with other proposals, including the temporary backstop proposal of 7 June 2018, whereby the entire UK (not just Northern Ireland) would remain in the EU customs union, meaning the elimination of tariffs, quotas, rules of origin and customs processes in EU-UK trade, and the application of the Union Customs Code by the UK and other relevant parts of the EU's common commercial policy, although the UK would fall outside its scope. Provisions on VAT and excise, on information exchanges, on enforcement, etc. would have to be agreed. The UK also committed to maintain Northern Ireland's full alignment with the relevant rules of both the customs union and the single market, but its proposal did not cover the issue.

Faced with continued disagreement over the backstop, the EU continued to emphasise the criteria against which any proposal would be assessed: providing a workable solution to avoid a hard border; respecting the integrity of the single market and customs union and forming an 'all-weather' backstop (i.e. ensuring the absence of a hard border on the island of Ireland in all circumstances).

Eventually, the Protocol on Ireland/Northern Ireland annexed to the withdrawal agreement endorsed in November 2018 by the EU-27 and UK leaders provided for a UK-wide backstop option. If no agreement to replace it was reached during the transition period, the main provisions of the backstop would be triggered from the end of the transition period, unless and until replaced, in whole or in part, by a subsequent agreement. The review clause in Article 20 of the protocol offered another way to end the application of the backstop: the EU or the UK could notify the other party, at any point after the end of the transition period, that it considered the protocol, in whole or in part, no longer necessary 'to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions'. The decision to end the application of the protocol, in whole or in part, would be made jointly by the EU and the UK in the Joint Committee tasked with overseeing implementation of the withdrawal agreement.

In essence, the backstop provisions relied on a 'single customs territory', including the UK and the EU, that would cover all trade in goods with the exception of fishery and aquaculture products, unless an EU-UK agreement on access to waters and fishing opportunities was in place by 1 July 2020. The UK would have to harmonise its commercial policy with the EU's common commercial policy to the extent necessary for the functioning of the single customs territory, including alignment with the EU's common customs tariff for goods imported from third countries, and applying the same rules of origin. Furthermore, in order to avoid a hard border and be able to place products on the EU internal market without restriction, Northern Ireland (but not the rest of the UK) would apply the Union Customs Code and remain aligned to EU law related to the internal market in several areas (e.g. VAT and excise law in respect of goods, sanitary and phytosanitary rules, goods standards, rules on agricultural production and marketing and state aid). In this context, some regulatory checks would be performed on goods entering Northern Ireland from Great Britain. At the same time, the UK committed to unfettered market access to the UK market for Northern Irish businesses. The protocol's 10 annexes set out the EU legislation applicable, including agreed level playing field commitments (in the area of taxation, environmental protection, labour and social standards, state aid and competition).

The Withdrawal Agreement (together with the non-binding political declaration on future EU-UK relations) were rejected on three occasions by the House of Commons. Whereas reasons for voting against the withdrawal agreement varied, the Irish backstop was invoked by two groups of Members of Parliament (MPs) as the main reason for which the deal was unacceptable: for hard-line
Conservative party Brexit supporters (constituting the European Research Group, ERG), the backstop would trap the UK in a customs union with the EU indefinitely, impeding a future independent UK trade policy; while for the 10 Democratic Unionist Party (DUP) MPs, it would lead to Northern Ireland being treated differently from the rest of the UK.

The new UK proposals regarding the backstop

In a letter to European Council President Donald Tusk, on 19 August 2019, the UK Prime Minister set out the reasons why the backstop included in the Protocol on Ireland/Northern Ireland in the current withdrawal agreement was unacceptable to the UK government and the main obstacle towards getting the deal approved by the House of Commons, stating that it:

- was undemocratic and inconsistent with UK sovereignty – the backstop had the potential to keep the UK in the EU customs union indefinitely with no means to exit unilaterally from it;
- was inconsistent with the UK’s view of the long-term relationship with the EU – namely the UK leaving the EU customs union and single market and having the freedom to diverge in future from EU standards; and
- risked undermining the balance enshrined in the Good Friday/Belfast Agreement between the communities in Northern Ireland, who would have no democratic control over the backstop.

For these reasons and while committing to respecting the Good Friday/Belfast Agreement and to finding solutions to the border challenge, the UK government insisted that the backstop should be replaced with a commitment to put in place ‘alternative arrangements’ before the end of the transition period.

The EU response to the letter was consistent with its long-established position that the backstop was an insurance policy meant to avoid a hard border on the island of Ireland unless and until an alternative solution was found; furthermore, while the letter did not propose any workable and legally operational solution to replace the backstop, the EU reiterated its intention to examine any proposals that would meet the objectives of the backstop. The European Parliament supported this position in its 18 September resolution on the state of play of the UK’s withdrawal from the European Union.

At the beginning of September, while the UK Prime Minister indicated that some progress had been made, the EU side insisted that there were still no ‘concrete proposals’ or ‘credible alternatives’ from the UK government concerning the backstop.

On 2 October 2019, the UK government published proposals for an amended Protocol on Ireland/Northern Ireland (the proposed legal text was not made public). Essentially the proposals would replace the backstop with the following elements:

- Northern Ireland would remain in the UK customs union; therefore, the border between Northern Ireland and Ireland would become a customs border. Regarding customs checks, the UK proposed that goods would be traded across the border based on either a prior declaration mechanism or a transit mechanism tracking the goods until their destination point. These arrangements could be supported by trusted trader schemes, simplified customs procedures for submitting declarations or temporary admission arrangements. Some physical checks could take place away from the border at certain locations. Some small traders would receive an exemption from border processes, as well as from paying duties altogether.
- VAT and excise, which would be subject respectively to EU and UK legislation, would not be collected at the border but according to arrangements to be defined in the Joint Committee overseeing implementation of the withdrawal agreement.
Northern Ireland would align with EU rules on all goods, including agrifood, thus eliminating the need for regulatory checks for trade in goods between Northern Ireland and Ireland.

These 'all-island regulatory zone' arrangements would be subject to the consent of the Northern Ireland institutions, before their entry into force and every four years thereafter.

As the new government was seeking a looser future trade and economic relationship with the EU based on a simple free trade agreement, the level playing field provisions agreed in the protocol would no longer be needed.

The EU and the UK should commit in the protocol never to impose a hard border on the island of Ireland and to avoid customs checks, regulatory checks or related physical infrastructure on the border.

The proposals were met with concern by Ireland, the EU institutions and businesses near to the Irish border. On 3 October, the European Parliament’s Brexit Steering Group issued a statement detailing reasons for which the proposals were not acceptable to the European Parliament. It stated that any form of border checks would mean 'the end of frictionless trade and as such would harm the all-island economy as well as represent a serious risk to the peace process'; furthermore, as the customs arrangements were to be defined at a later stage, Parliament could not approve the protocol without knowing its full implications; finally, the consent of the Northern Ireland Assembly would make the agreement contingent on a unilateral decision.

On 9 October, speaking in the European Parliament’s plenary session, the EU’s chief negotiator, Michel Barnier, reiterated the EU's major problems with the UK proposals:

1. First, the EU was obliged to perform customs and regulatory checks at all its customs borders, in order to preserve the integrity and credibility of the EU's single market. It was therefore impossible for the EU to commit legally to avoiding any checks at the border on the island of Ireland on the basis of an as yet undeveloped and untested system proposed by the UK.

2. The proposals removed the legal security offered by the backstop, with the prospect of finding alternative solutions at a later date.

3. Northern Irish consent would amount to making the protocol conditional on a unilateral decision (by institutions that moreover have not been functioning properly since January 2017).

4. As regarded the future relationship, the UK’s request for a basic free trade deal removing any level playing field commitments would pose the risk of regulatory competition, even fiscal, social or environmental dumping, and as such was unacceptable to the EU.

Despite significant disagreements, negotiations between the EU and UK continued and, prior to the European Council meeting on 17 and 18 October 2019, intensified considerably on the basis of new concessions from the UK government.

On 17 October 2019, the European Commission President and the UK Prime Minister announced that negotiators had reached an agreement on the revised Protocol on Ireland/Northern Ireland and on a revised Political Declaration. Consequently, the Commission recommended that the European Council endorse the new agreement and that the European Parliament give its consent. In its conclusions of 17 October 2019, the European Council (Article 50), endorsed the withdrawal agreement, approved the Political Declaration, and called on the EU institutions to 'take the necessary steps' to ensure that the agreement could enter into force on 1 November 2019.

The new withdrawal deal: What has changed?

The new Brexit deal brings changes to the Protocol on Ireland/Northern Ireland, as well as to the Political Declaration on the future relationship between the EU and the UK, but without modifying the rest of the withdrawal agreement (except for technical adaptations to Articles 184 and 185).³
Compared with the deal (explained in a previous EPRS briefing) negotiated by the EU with former UK Prime Minister Theresa May and rejected three times in the House of Commons, the new package reverts to a Northern Ireland-only solution, whereby the region applies EU customs and tariffs legislation, as well as the relevant EU single market rules needed to avoid any regulatory or customs border on the island of Ireland. As for the Political Declaration, the few modifications are intended to reflect the UK government’s ‘different level of ambition’ with respect to the future EU-UK relationship.

The Protocol on Ireland/Northern Ireland

The essential feature of the new protocol agreed by the EU and UK on 17 October 2019 is that it removes the need for an insurance policy (the backstop) to apply as of the end of the transition period unless and until superseded in whole or in part by a subsequent agreement. Instead, the parties agree that the new protocol will operate as a permanent, legally operative solution, unless the democratic consent of the Northern Ireland Assembly is withdrawn at a later stage.

Consequently, the protocol no longer contains any references to the three scenarios set out in the joint report of December 2017, or to the temporary nature of the protocol. The previous review clause, which could have been triggered as one of the mechanisms to cease application of the protocol, is also removed. Nevertheless, there is one provision in the text made for the possibility of a subsequent agreement between the EU and UK superseding in part or in full the protocol (in Article 13(8)).

Customs provisions

Articles 4 and 5 of the protocol relate to customs provisions. Article 4 makes clear that Northern Ireland is part of the UK customs territory, thereby allowing the inclusion of Northern Ireland in the scope of any trade agreements the UK may conclude with third countries (without prejudice to application of the protocol). It further provides that, under UK agreements with third countries, Northern Ireland goods may be given preferential market access to those countries on the same terms as goods produced in other parts of the UK.

Article 5 sets out how EU customs legislation will apply to Northern Ireland. More specifically (and similarly to the previous protocol), the Union customs code will apply to Northern Ireland, namely to all goods entering its territory (except UK territorial waters). The Joint Committee may decide at a later date on the conditions under which duty exemptions may be granted to Northern Irish-registered vessels bringing in certain fisheries and aquaculture products. This arrangement institutes a de facto customs border in the Irish Sea and not on the island of Ireland.

EU customs duties will apply to all goods entering Northern Ireland, if those goods, by themselves or constituting input to other products after processing, risk entering the EU single market. All goods entering Northern Ireland will be presumed to move to the EU, unless it is established that: 1) the good will not be processed in Northern Ireland; or 2) the good fulfils a set of criteria to be adopted by the Joint Committee that establish the good is not at risk of entering the EU single market. No customs duties will apply to UK goods entering Northern Ireland if they do not move on into the EU. Goods from third countries entering Northern Ireland directly will pay UK customs duties, unless the goods concerned move on into the EU. The UK may reimburse duties levied according to EU law, when the UK duty is lower, or provide undertakings with compensation, in full compliance with EU state aid rules (as provided in Article 10 of the protocol). No duties will be levied on the personal property of UK residents moved to Northern Ireland from other parts of the UK or on low-value consignments, or on goods sent from one individual to another.

Internal market rules

Northern Ireland will remain aligned to a limited set of rules connected with the EU’s single market in order to avoid a hard border, to allow entities from Northern Ireland to place products without
restrictions on the EU internal market, and to protect EU consumers: legislation on goods, sanitary rules for veterinary controls (‘SPS rules’), rules on agricultural production/marketing, VAT and excise in respect of goods, and state aid rules. In this sense, all goods entering Northern Ireland from the UK will be subject to the necessary checks and controls to be performed by UK authorities with appropriate supervisory and enforcement mechanisms for the EU.

It must be mentioned that the previous protocol also provided for Northern Ireland to align with these EU provisions. The current protocol however introduces a few extra provisions on VAT and excise, namely that UK authorities will be responsible for the collection of VAT and excise in application of the relevant EU provisions on goods, to be remitted to the EU, with the exception of transactions taxable in Northern Ireland. The UK may also decide to apply to goods taxable in Northern Ireland similar VAT exemptions and rates as those applied in Ireland.

At the same time, exactly as in the previous protocol, the UK will ensure that Northern Ireland goods have unfettered access to the UK internal market.

However, the level playing field provisions that would have applied under the previous protocol in respect of the single customs territory comprising the EU and the UK have now been removed (except State aid as mentioned above).

The remaining provisions (on implementation, application, supervision and enforcement, as well as the common provisions) are identical to the previous protocol. Seven annexes rather than the previous ten form part of the revised protocol.

Consent by Northern Ireland

Article 18 of the protocol now includes provisions on democratic consent by Northern Ireland. It provides for a decision by the Northern Ireland Assembly to give or withhold democratic consent to the continuing application to Northern Ireland of the protocol’s customs and EU regulatory alignment provisions (Articles 5 to 10). The decision will be taken in conformity with the UK Declaration on the operation of democratic consent in Northern Ireland (see below). After the UK renounced its original Stormont lock idea proposed on 2 October, which would in effect have given the Democratic Unionist Party a veto on arrangements for avoiding a hard border coming into force or staying in force, the article provides that the initial expression of democratic consent to the protocol is to take place four years after the end of the transition period; the Northern Ireland Assembly will then express itself:

- four years thereafter, if the preceding consent decision has been taken by simple majority (members present and voting);
- eight years thereafter, if the preceding consent decision has been made with cross-community support. Cross-community support in the Northern Ireland Assembly is defined in two ways: 1) a simple majority of Members including a majority of unionist and nationalist designations present and voting; or 2) 60% of Members present and voting, including at least 40% of each of the two designations present and voting.

Should consent be withheld, then the relevant provisions of the protocol (Articles 5 to 10 and any other provision dependent on them) will cease to apply two years after the decision was taken.

UK declaration concerning the operation of the consent provisions in the protocol

To fulfil its obligations under Article 18 of the protocol, the UK government presented a Declaration concerning the operation of the consent provisions. First of all, the UK government commits to put the process for democratic consent under Article 18 into legislation before the end of the transition period. The declaration further sets out the outline of the consent process, as well as an alternative process for giving consent, including the deadlines applicable. Two months before the end of the transition (initial period) and two months before any subsequent four-year or eight-year period thereafter, the UK government must seek (by written notification) the consent of the Northern Ireland Assembly.
The revised Brexit deal

The revised political declaration has few changes compared to the previous deal:

- It clarifies the UK's intention to seek a free trade agreement with the EU in the negotiations on the future partnership;
- It removes references to the backstop and its replacement by a subsequent agreement;
- It keeps and slightly expands on the parties' commitments to ensure a level playing field (despite the UK government's stated desire to remove these obligations); it reiterates that the 'precise nature of these commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties';
- It slightly modifies the previous governance and dispute settlement provisions, in particular by removing the references to the dispute resolution and enforcement arrangements in the withdrawal agreement (while, in essence, the related provisions in the political declaration and the withdrawal agreement are similar);
- It provides for a high-level meeting to assess progress in the negotiations on the future relationship in June 2020 (and no longer convening every six months).

Ratifying the revised deal

The time pressure is significant as it is the intention of both the EU and the UK to complete all the necessary steps in order to have the withdrawal agreement in force on 1 November 2019, without having to enter into a third extension of the Article 50 process. Whereas on the EU side, ratification of the deal has every likelihood of being completed swiftly and without obstacles, as the only substantive changes to the revised deal affect the Protocol on Ireland/Northern Ireland, in the UK, Parliament continues to complicate the prospect of an orderly UK withdrawal from the EU on 1 November.

Approval process in the EU

As explained in a previous EPRS briefing, the European Parliament must give its consent to the conclusion of the withdrawal agreement by the EU. Following endorsement by the European Council in November 2018, on 11 January 2019, the Council (Article 50), adopted the decision on signing the agreement and approved the draft decision to conclude the agreement, which it forwarded to the European Parliament for consent. The Council decision to sign the agreement was subsequently amended on 13 April 2019 by Council Decision 2019/642, owing to the fact that the date of entry into force of the withdrawal agreement had to be changed following the extension granted on 12 April 2019.

Following the revised deal, the Council amended its decisions on signing and concluding the agreement. It forwarded the latter to the European Parliament to obtain its consent.

Parliament must give its consent to the withdrawal agreement by a majority of votes cast (i.e. simple majority of Members present), in accordance with Rule 88 of the European Parliament’s rules of
procedure. Quorum rules apply. 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. No amendments to the recommendation on consent are admissible, except when they aim to reverse the recommendation of the rapporteur. In plenary, there will be a single vote on the recommendation to approve or deny consent.

Regarding the timing, the position of the European Parliament so far has been to have its vote of consent to any EU-UK withdrawal agreement only after the UK Parliament has approved the deal. On 17 October 2019 the President of the European Parliament had confirmed that the European Parliament would be able to finalise the consent procedure the following week when it met for its plenary session, should the revised deal be approved by the House of Commons in the vote scheduled for 19 October 2019. In this scenario, the Conference of Presidents would have adopted measures necessary to organise the vote at committee and plenary level. However, in light of the House of Commons having withheld consent on the withdrawal deal, the European Parliament has maintained its position to vote on consent only after the UK Parliament’s approval of the deal. The President of the European Parliament could, if necessary, convene an extraordinary plenary session, in accordance with Rule 154(4) of the European Parliament Rules of Procedure.

Subject to Parliament’s consent, the Council may conclude the agreement by a ‘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.

Approving the deal in the UK

The UK Parliament passed the 2018 European Union (Withdrawal) Act, part of which affirms the UK Parliament’s power to approve the withdrawal agreement before it is signed, as a precondition to its signature and ratification. According to Section 13 of this Act, before the UK can ratify the withdrawal agreement, the UK Parliament must complete two steps:

- approve the treaty by resolution (known as the ‘meaningful vote’);
- adopt legislation for the implementation of the withdrawal agreement.

It was at the meaningful vote stage that the House of Commons rejected the withdrawal agreement on three occasions during Theresa May’s premiership.

Should the Commons approve a deal, the government must introduce a bill to implement the withdrawal agreement in domestic legislation. This must provide for enforcement of the agreement and 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 around a year.

However, in order to expedite the process, Parliament could pass another act to either amend the requirements of Section 13 of the 2018 Act or set new conditions for the implementation of the withdrawal agreement domestically.

In addition, the 2010 Constitutional Reform and Governance Act (CRAG) provides that a period of 21 sitting days must be observed after government presents the text of a treaty to Parliament, possibly followed by further delays, should the Commons object to ratification. If the withdrawal agreement is to enter into force on 1 November, provided all other requirements are fulfilled, the
government could, for example, make a provision in the implementation bill to provide that its adoption fulfils the obligations in the CRAG Act.

The Benn Act

At the end of August, the UK Prime Minister announced that Parliament would be prorogued for around five weeks, from the second week of September until 14 October (the prorogation of Parliament was declared unlawful and consequently annulled by the Supreme Court). Johnson argued that the suspension was needed as the current session had lasted far longer than normal and a new Queen's speech was necessary to present the government's legislative priorities; furthermore, he argued, MPs would have ample time to debate Brexit. Nevertheless, a number of MPs claimed that Johnson's plan was to remove the opportunity for Parliament to debate Brexit and to 'run down the clock' towards a no-deal exit from the EU.

Therefore, through a specific parliamentary procedure (also used in March 2019 to vote against a no-deal exit from the EU), a cross-party alliance of parliamentarians passed a bill requiring the UK Prime Minister, among other things, to seek a further three-month extension from the EU (until 31 January 2020) if, by 19 October 2019, MPs had not approved a withdrawal agreement or a motion to leave the EU without a deal. If at any time after 19 October a withdrawal agreement were to be approved by the Commons, or the Commons decided the UK should leave without a deal, the prime minister could withdraw or modify his Article 50 extension request. The bill was passed swiftly in the House of Lords and received Royal Assent on 9 September to become the European Union (Withdrawal) (No 2) Act 2019.

Approving the revised deal: The meaningful vote delayed

On 17 October 2019, after the revised deal was agreed by the EU and the UK, members of the House of Commons approved the government’s motion for an extraordinary sitting on Saturday, 19 October 2019. An amendment was, however, passed allowing for the possibility to table amendments to any motion moved by the government on Saturday.

On 18 October, the government tabled the text of two motions for the consideration of the House, aiming to fulfil at the same time the conditions for a 'meaningful vote' under Section 13 of the EU Withdrawal Act 2018 and the requirements of the Benn Act. The first motion (to which amendments were tabled) asked for the approval of the House for the revised withdrawal deal; the second asked the House to approve the UK leaving the EU without a withdrawal agreement.

On 19 October, the House of Commons passed an amendment to the first motion, by 322 to 306 votes, effectively obliging the UK Prime Minister to seek an Article 50 extension from the EU until 31 January 2020. The amendment delayed the approval of the deal under the meaningful vote requirement until the implementing legislation has been passed. The second motion on leaving the EU without a deal was not moved by the government. Following the vote, as neither of the two conditions provided by the Benn Act had been fulfilled (approving a deal or approving a no-deal UK withdrawal from the EU), the Prime Minister was thus required by law to request an extension by the end of that same day. The request was sent in due time, however accompanied by a letter from the Prime Minister to the European Council President arguing that a further extension would be damaging to EU and UK interests. The EU acknowledged the vote in the House of Commons and receipt of the extension request; however the EU-27 will not decide on whether or not to grant an extension immediately. Meanwhile, the EU institutions will focus on completing the procedural steps for approving the new deal, including obtaining the European Parliament’s consent.

On 21 October, the UK government intended both to introduce the European Union (Withdrawal Agreement) Bill – which provides for the domestic implementation of the withdrawal agreement – and to organise another meaningful vote on the deal. However, the Speaker of the House, confronted with the issue of allowing another vote on ‘essentially the same matter’ in the same parliamentary session, ruled against allowing the debate on the motion (the meaningful vote) to go ahead, as there was no change in substance compared to the motion tabled two days before nor
any change in circumstances. The government could nevertheless introduce, as scheduled, the EU (Withdrawal Agreement) Bill and present a proposed timetable for its passage.

The European Union (Withdrawal Agreement) Bill was introduced by the government on 21 October. It will represent a significant challenge for the UK Parliament to pass a complex piece of legislation in the eight sitting days left before 31 October (in the absence of an extension). To speed up approval, in its draft form, the bill repeals the requirements of Section 13 of the 2018 EU Withdrawal Act, thus removing the need for parliamentary approval in a meaningful vote, and removes the obligation to comply with the CRAG before the withdrawal agreement can be ratified. If Members of the House of Commons approve the bill at second reading (in principle a yes/no vote), to take place as early as 22 October, this would also be widely understood as agreement, at least in principle, for the revised deal. According to the House of Commons Library, the government will likely need to secure agreement on a cross-party basis for a legislative timetable (especially for the House of Lords) in order to ensure the swift passage of the EU (Withdrawal Agreement) Bill through both Houses. To this end, the government has tabled a programme motion that aims to schedule parliamentary time for a swift adoption of legislation. Should parliament vote against this, experts consider it would be extremely difficult to pass the bill in time for the UK to leave the EU on 31 October. At the same time, amendments may be tabled (e.g. an obligation to secure a customs union with the EU, or for a confirmatory vote on the deal) that may be considered unacceptable to the government.

In this context, the Brexit Steering Group decided to advise the European Parliament’s Conference of Presidents to await the full ratification of the deal by the UK before the EP proceeds with its own vote, given the continuing uncertainty about the situation. The Conference of Presidents agreed on 21 October that the EP would have its say on the withdrawal agreement after the UK Parliament’s approval. In the meantime the Constitutional Affairs Committee would start its examination of the revised deal.

ENDNOTES

1 The European Council decision to extend the Article 50 TEU negotiating period until the end of October 2019 was conditional on the fulfilling by the UK of its legal obligation to hold European elections in May 2019. If the UK had failed to hold European Parliament elections or to ratify the withdrawal agreement by 22 May 2019, then the extension would have ended on 31 May 2019.

2 See also the statement by the EU’s chief Brexit negotiator Michel Barnier to the European Parliament’s Conference of Presidents, 12 September 2019.

3 The revised Article 184 replaces 25 November 2018 as the date of the Political Declaration with October 2019; Article 185 simply adapts the numbering of the provisions of the Protocol that will apply as of the entry into force of the withdrawal agreement, in light of the changes.

4 If the motion had been allowed and the House of Commons had approved it, without (significant) amendments, then the Prime Minister would have had the possibility to withdraw or amend the extension request according to the Benn Act; in this context, some parliamentarians feared that the path to no-deal would have opened up again.

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