



**BRIEFING PAPER**

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# Brexit delayed: the European Council Conclusions on extending Article 50

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## Summary

### **The UK requests an Article 50 extension**

With just over a week to go to the scheduled Brexit date of 29 March 2019, the Prime Minister wrote to the President of the European Council on 20 March requesting an extension to the Article 50 period in order to delay Brexit.

Theresa May had previously stated her opposition to an extension of Article 50. However, following cross-party attempts to force a House of Commons vote on extending Article 50 she committed to holding such a vote on 14 March if the Government had not succeeded in getting its Withdrawal Agreement (WA) with the EU approved by the House by 12 March, and if the House subsequently rejected leaving the EU without a deal.

Following the Commons' second rejection of the WA on 12 March, and its vote against no deal on 13 March, the Government motion on seeking an Article 50 extension was approved by the House on 14 March. It stated that a one-off extension of Article 50 ending on 30 June 2019 for the purpose of passing the necessary EU exit legislation would be sought if the Commons had approved the WA by 20 March. Alternatively, the motion noted that if the WA had not been approved that the European Council was highly likely to require a clear purpose for any extension, not least to determine its length, and that any extension beyond 30 June 2019 would require the UK to hold European Parliament (EP) elections in May.

The Prime Minister wrote to the President of the European Council, Donald Tusk, on 20 March requesting an Article 50 extension until 30 June 2019. She said that she intended to hold another Commons' vote on the WA as soon as possible and that the extension would be required to pass legislation to implement it. She said that she did not believe it to be in the UK or EU interest for the UK to take part in the EP elections. President Tusk responded that a short extension would be possible, but would be conditional on a positive vote on the WA.

### **The European Council agrees an Article 50 extension**

The European Council met on 21 March and agreed to an extension of Article 50 until 22 May 2019, provided the WA is approved by the House of Commons in the next week. In the event of the WA not being approved, the European Council agreed to an extension until 12 April 2019. By this point it said that it expects the UK "to indicate a way forward before this date for consideration by the European Council".

The UK request for an extension to 30 June was based on the view that UK participation in the EP elections could be avoided given that the new Parliament does not sit for the first time until 2 July. However, advice from the European Commission warned of the risk of a scenario whereby the UK then sought a longer extension after 23 May or decided to revoke Article 50 without then having representation in the EP and with some of the UK's Parliament seats having been reallocated. The Commission warned that the failure to organise EP elections in the UK could make the constitution of the new European Parliament illegal and result in subsequent EU decisions

being open to legal challenge. Failure to participate in the EP elections would also see the UK in breach of EU Treaty Articles relating to the rights of EU citizens to vote in EP elections.

The European Council's agreement to extend Article 50 until 12 April 2019 gives the UK more time to consider next steps should the WA not be approved by the House of Commons prior to 29 March, and to avoid a cliff edge to a no deal Brexit on that date. It also reflects the need for some Member States to have certainty by mid-April as to whether the UK is remaining in the EU for a longer period (and therefore participating in EP elections) given that some of the UK's EP seats will be reallocated to them. 12 April is also the date by which returning officers in the UK would need to publish notice of the EP elections.

#### **Deal, no deal, a long extension or revoke Article 50**

In his remarks following the European Council on 21 March, President Tusk held out the possibility of a longer extension being agreed beyond 12 April if the WA had not been approved and the UK decided to participate in the EP elections. He said the UK Government will then have "a choice of a deal, no-deal, a long extension or revoking Article 50".

In her statement following the European Council, the Prime Minister said if the WA was not agreed, the UK "would either leave with no deal, or put forward an alternative plan". Mrs May said that further extension would mean UK participation in the EP elections, but that she believed strongly "that it would be wrong to ask people in the UK to participate in these elections three years after voting to leave the EU".

# 1. Background

## 1.1 Article 50 and the Withdrawal Agreement

Article 50 (3) of the Treaty on European Union (TEU) provides that the EU Treaties shall cease to apply to the withdrawing Member State from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification to leave was issued “unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period”.<sup>1</sup>

In the UK’s case, the notice to withdraw from the EU was issued on 29 March 2017, meaning that 29 March 2019 is the default date for the UK to leave the EU. The Withdrawal Agreement (WA)<sup>2</sup> agreed by the UK and EU in November 2018 also provided for the UK to leave the EU on 29 March, meaning that this was the scheduled date of Brexit whether or not the Agreement was approved.

Under Section 13 of the *European Union (Withdrawal) Act 2018*, UK ratification of the WA requires that it is approved (alongside the Political Declaration setting out the framework for the future EU-UK relationship)<sup>3</sup> by the House of Commons, and that an Act of Parliament providing for the implementation of the WA is passed.

The Government has been defeated twice in the House of Commons, on 15 January 2019 and 12 March 2019, on ‘meaningful vote’ motions seeking approval for the WA and PD.

The second defeat came after the Government had [agreed](#) new supplementary texts with the EU relating to the most contentious part of the WA, the Northern Ireland backstop<sup>4</sup>, giving assurances over the EU’s commitment to negotiate a future agreement to replace the arrangement and confirming that the UK would be able to seek arbitration if the EU does not act in good faith in the negotiations.<sup>5</sup>

The Government indicated that it intended to bring another ‘meaningful vote’ to the House prior to the European Council meeting of 21-22 March. However, in a [statement](#) on 18 March the House of Commons Speaker John Bercow cited parliamentary convention set out in *Erskine May* that “a motion or an amendment which is the same, in substance, as a question which has been decided during a session may not be brought forward again during that same session”. Accordingly, the Government could “not

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<sup>1</sup> The Article 50 process is described in more detail in Commons Library Briefing Paper CBP7551, [Brexit: how does the Article 50 process work?](#) 16 January 2017.

<sup>2</sup> See House of Commons Library Briefing Paper CBP8453, [The UK’s EU Withdrawal Agreement](#), 1 December 2018.

<sup>3</sup> See House of Commons Library Briefing Paper CBP8454, [The Political Declaration on the Framework for Future EU-UK Relations](#), 3 December 2018

<sup>4</sup> For further details on what the backstop entails see House of Commons Library Insight, [The backstop explained](#), 12 December 2018. For a discussion of the outcome of the debate on 29 January 2019, see House of Commons Library Insight, [A ‘Plan B’ considered and two instructions given: Where next for Parliament and Brexit?](#), 30 January 2019.

<sup>5</sup> See House of Commons Library Briefing Paper CBP8525 [The ‘Strasbourg package’](#), 13 March 2019.

legitimately . . . resubmit to the House the same proposition or substantially the same proposition” as that of the previous week.

## 1.2 The UK decision to seek an Article 50 extension

The Prime Minister has repeatedly spoken [against](#) extending Article 50 and stated that [the UK will leave the EU on 29 March 2019](#). However, on 26 February, Theresa May committed the Government to holding a vote in the House of Commons on seeking an Article 50 extension on 14 March, if there had not been approval of the WA by the House by 12 March and if the House also rejected leaving the EU without a deal.

The change of Government position came after three Cabinet Ministers authored a joint article in the *Daily Mail* suggesting that Article 50 be extended in order to avoid the UK leaving the EU without a deal, should there be no breakthrough in terms of the Commons supporting the WA<sup>6</sup>, and reports that several Government Ministers and Conservative MPs were prepared to vote for a cross-party amendment to make parliamentary time for Yvette Cooper’s Private Member’s Bill legislating for a similar approach to be taken.<sup>7</sup>

After voting against leaving the EU without an agreement on 13 March, the Commons approved the Government’s motion on 14 March agreeing that it should seek an Article 50 extension.

The [motion](#) stated that if the Commons had approved the WA and PD by 20 March, then it would seek a one-off extension of Article 50 ending on 30 June 2019 for the purpose of passing the necessary EU exit legislation. Alternatively, it noted that if a resolution approving the WA and PD had not been passed by then “it is highly likely that the European Council at its meeting the following day would require a clear purpose for any extension, not least to determine its length, and that any extension beyond 30 June 2019 would require the United Kingdom to hold European Parliament elections in May 2019”. The motion was passed by [412 votes to 202](#).

## 1.3 Prime Minister requests an Article 50 extension

The Prime Minister wrote to the President of the European Council Donald Tusk on 20 March seeking an Article 50 extension. In the [letter](#), Mrs May said that the Government intended to put forward another ‘meaningful vote’ in the House of Commons as soon as possible. She explained:

If the motion is passed, I am confident that Parliament will proceed to ratify the deal constructively. But this will clearly not be completed before 29 March 2019. In our legal system, the Government will need to take a Bill through both Houses of Parliament to enact our commitments under the Withdrawal Agreement into domestic law. While we will consult with the Opposition in the usual way to plan

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<sup>6</sup> For the joint article by David Gauke, Amber Rudd and Greg Clark see [Cabinet 'No Deal' revolt: PM facing prospect of a mass walkout after three senior ministers signal they are ready to help force a delay to Brexit](#), *Daily Mail*, 22 February 2019. The *Daily Mail* also reported that several Government ministers were prepared to resign and support the Cooper amendment on 27 February.

<sup>7</sup> See House of Commons Library Insight, [Yvette Cooper’s Private Member’s Bill explained](#), 19 February 2019.

the passage of the Bill as quickly and smoothly as possible, the timetable for this is inevitably uncertain at this stage. I am therefore writing to inform the European Council that the UK is seeking an extension to the Article 50 period. . . until 30 June 2019.

Mrs May also explained that she had intended to bring another ‘meaningful vote’ to the Commons prior to the European Council meeting, but that this had not been possible following the Speaker’s statement on 18 March.

Mrs May asked that ahead of the next ‘meaningful vote’ the European Council approve the documents agreed by her and President Juncker in Strasbourg on 11 March, “putting the Government in a position to bring these agreements to the House and confirming the changes to the Government’s proposition to Parliament”. She said that she also intended to bring forward further domestic proposals to confirm her previous commitments to protect the UK internal market “given the concerns expressed about the backstop”.<sup>8</sup>

Referring back to the wording of the Government motion adopted by the House of Commons on 14 March, and the reference to the longer extension that might be needed if the WA is not approved by the Commons and the necessity of UK participation in the EP elections if this occurred, the Prime Minister said: “I do not believe that it would be in either of our interests for the UK to hold European Parliament elections”.

## 1.4 Response to Prime Minister from European Council President

European Council President Donald Tusk issued a [statement](#) in response to Mrs May’s letter seeking an Article 50 extension on 20 March. This followed a phone call with Mrs May to discuss the proposal. He said:

In the light of the consultations that I have conducted over the past days, I believe that a short extension will be possible, but it will be conditional on a positive vote on the Withdrawal Agreement in the House of Commons. The question remains open as to the duration of such an extension. Prime Minister May’s proposal, of 30 June, which has its merits, creates a series of questions of a legal and political nature. Leaders will discuss this tomorrow. When it comes to the approval of the Strasbourg agreement, I believe that this is possible, and in my view it does not create risks. Especially if it were to help the ratification process in the United Kingdom.

At this time I do not foresee an extraordinary European Council. If the leaders approve my recommendations, and if there is a positive vote in the House of Commons next week, we can finalise and formalise the decision on the extension in a written procedure. However, if there is such a need, I will not hesitate to invite the members of the European Council for a meeting to Brussels next week.

Even if the hope for a final success may seem frail, even illusory, and although Brexit fatigue is increasingly visible and justified, we cannot give up seeking – until the very last moment – a positive solution, of

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<sup>8</sup> This would involve the whole of the UK and not just Northern Ireland remaining aligned with EU rules necessary to prevent a hard border on the island of Ireland, thus preventing a divergence in the regulatory framework between Northern Ireland and the rest of the UK.

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course without opening up the Withdrawal Agreement. We have reacted with patience and goodwill to numerous turns of events, and I am confident that, also now, we will not lack the same patience and goodwill, at this most critical point in this process. Thank you.

For further background on the UK decision to seek an Article 50 extension, the issues raised by the request and comments from EU leaders on a possible extension, see House of Commons Library Briefing Paper CBP8496, [Extending Article 50: could Brexit be delayed?](#), 19 March 2019.

## 2. European Council Conclusions, 21 March 2019

The European Council (EU Heads of State and Government) met on 21 March 2019 to consider the Prime Minister's request for an extension to the Article 50 period. The European Council met in the Article 50 format (the 27 heads of government without the UK) after an initial meeting with the Prime Minister to discuss the UK request.

### 2.1 Council Conclusions

The [conclusions](#) of the European Council, released close to midnight after a lengthy meeting, stated:

1. The European Council takes note of the letter of Prime Minister Theresa May of 20 March 2019.
2. In response, the European Council approves the Instrument relating to the Withdrawal Agreement and the Joint Statement supplementing the Political Declaration agreed between the European Commission and the government of the United Kingdom in Strasbourg on 11 March 2019.
3. The European Council agrees to an extension until 22 May 2019, provided the Withdrawal Agreement is approved by the House of Commons next week. If the Withdrawal Agreement is not approved by the House of Commons next week, the European Council agrees to an extension until 12 April 2019 and expects the United Kingdom to indicate a way forward before this date for consideration by the European Council.
4. The European Council reiterates that there can be no opening of the Withdrawal Agreement that was agreed between the Union and the United Kingdom in November 2018. Any unilateral commitment, statement or other act should be compatible with the letter and the spirit of the Withdrawal Agreement.
5. The European Council calls for work to be continued on preparedness and contingency at all levels for the consequences of the United Kingdom's withdrawal, taking into account all possible outcomes.
6. The European Council will remain seized of the matter.

### 2.2 President Tusk's remarks

In his [remarks](#) following the meeting, President Tusk said that the Prime Minister had "repeated her requests, to extend the Article 50 period until the 30th of June, and to approve the so-called Strasbourg agreement" and during the discussion among the EU27, the leaders "approached these requests in a positive spirit".

President Tusk referred to the two scenarios for extending Article 50 set out in the Council conclusions. With regards to the second scenario of the WA not being approved and a short extension until 12 April, he said:

What this means in practice is that, until that date, all options will remain open, and the cliff-edge date will be delayed.

The UK Government will still have a choice of a deal, no-deal, a long extension or revoking Article 50. The 12th of April is a key date in terms of the UK deciding whether to hold European Parliament elections. If it has not decided to do so by then, the option of a long extension will automatically become impossible.

As you know, in accordance with the Treaties, any extension must be decided unanimously by the EU27, in agreement with the Member State concerned. This is why I met Prime Minister May several times tonight – to make sure that the UK accepts the extension scenarios – and I am pleased to confirm that we have reached an agreement on this.

### 2.3 Prime Minister's statement

The Prime Minister met with President Tusk following the European Council meeting to discuss its outcome. She then issued a [statement](#) in which she said:

Firstly I welcome the Council's approval of the legally-binding assurances in relation to the Northern Ireland backstop which I negotiated with President Juncker last week.

This should give extra assurance to Parliament that, in the unlikely event the backstop is ever used, it will only be temporary; and that the UK and the EU will begin work immediately to replace the backstop with alternative arrangements by the end of December 2020.

After a lengthy discussion, the council today also agreed, subject to a successful vote next week, that in order to provide time for the UK Parliament to agree and ratify a Brexit deal, the date of our departure will now be extended to 22 May.

If Parliament does not agree a deal next week, the EU Council will extend Article 50 until 12 April. At this point we would either leave with no deal, or put forward an alternative plan.

If this involved a further extension it would mean participation in the European Parliamentary elections.

As I have said previously, I believe strongly that it would be wrong to ask people in the UK to participate in these elections three years after voting to leave the EU.

What the decision today underlines is the importance of the House of Commons passing a Brexit deal next week so that we can bring an end to the uncertainty and leave in a smooth and orderly manner.

The European Council agreement on extending Article 50 was formalised in a European Council [decision](#) published on 22 March. The decision also confirmed that the Article 50 extension provided for in the decision had been agreed to in a [letter](#) to President Tusk from the UK Permanent Representative to the EU, Sir Tim Barrow, on 22 March 2019.

## 3. Context of European Council Conclusions

### 3.1 The WA will not be re-opened but the PD could be

Statements from the EU institutions and Member States have previously suggested a willingness to agree to an Article 50 extension if the UK requests this, but provided it is for a specific stated purpose. There have been indications that EU leaders would be prepared to extend Article 50 and re-open talks if there was a major shift in the UK position. But such talks would focus on possible changes to the PD to reach agreement on a more specific framework for the future relationship that could win majority support in the Commons for the WA and PD as a package. EU leaders affirmed at the [December 2018 European Council](#) that the WA was “not open for renegotiation” and this position has been reiterated repeatedly since.

In a speech to the European Parliament on 16 January 2019 (following the first ‘meaningful vote’ rejection), the EU’s chief Brexit negotiator Michel Barnier insisted that the WA represented the “best possible compromise” and its ratification remained “necessary”. He also said that “the backstop which we have agreed with the United Kingdom must remain a backstop and it must remain credible”.

With regard to the future relationship, Mr Barnier said that if the UK chose “to change its red lines, and to be more ambitious and go beyond a simple free trade deal in our future relationship, then the EU would be ready to immediately support this evolution and respond favourably”.<sup>9</sup>

On 30 January 2019, the day after the Prime Minister committed to [seeking legally binding changes](#) to the WA addressing the House of Commons concerns on the backstop, President Tusk [said](#) that the EU position was “clear and consistent” and that the WA “is not open for renegotiation”.

Following the agreement of new supplementary texts by the UK and EU on 11 March, Commission President Juncker [said](#):

It is what we do with this second chance that counts. Because there will be no third chance. There will be no further interpretations of the interpretations; and no further assurances of the re-assurances . . .

The European Council [decision](#) formalising the agreement on Article 50 extension, published on 22 March, affirmed that:

Such an extension excludes any re-opening of the Withdrawal Agreement. Any unilateral commitment, statement or other act by the United Kingdom should be compatible with the letter and the spirit of the Withdrawal Agreement.

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<sup>9</sup> Michel Barnier, [speech to EP](#), 16 January 2019. Opening statements available at [https://multimedia.europarl.europa.eu/en/opening-statements\\_I166570\\_03-V\\_rv](https://multimedia.europarl.europa.eu/en/opening-statements_I166570_03-V_rv).

## 3.2 An extension needs to be for a clear purpose

Following the Government's defeat in the second 'meaningful vote' on 12 March, [statements](#) issued by spokespersons for both President Tusk and President used the same wording:

On the EU side we have done all that is possible to reach an agreement. . .

Should there be a U.K. reasoned request for an extension, the EU27 will consider it and decide by unanimity. The EU27 will expect a credible justification for a possible extension and its duration. The smooth functioning of the EU institutions will need to be ensured.

EU heads of government have also stressed the need for a clear purpose for an Article 50 extension and to avoid prolonging negotiations unless there was a significant shift in the UK position. For example, on 27 February French President Emmanuel Macron said that a request for Article 50 extension would need to be "[justified by new choices by the British](#)" and "under no circumstances would we accept an extension without a clear perspective".

On 25 February, Dutch Prime Minister Mark Rutte said if the UK asked for delay "[the EU will ask what do you want with it?](#)". He said: "We don't want to go round in circles for the next couple of months. What will be achieved by it?"

On 21 March, prior to the European Council, Irish Prime Minister Leo Varadkar [said](#):

Everyone wants to avoid a no-deal but we can't have a situation whereby we have a rolling cliff-edge, where we just put off decisions and deadlines every couple of months.

However, the day before, Mr Varadkar said it was time to "[cut the British Government some slack](#)" and that Ireland was willing to support the UK request for an extension "but obviously we're not entertaining any change to the withdrawal agreement or the backstop".

Arriving at the European Council on 21 March, President Macron [said](#):

The exit process has taken two years of negotiation. It cannot be renegotiated. . . In the case of a negative vote in the British parliament, we will be going to a no-deal.

President Macron also [said](#): "There must be a deep political change for there to be anything else other than a technical extension".

In his [statement](#) following the General Affairs Council on 19 March, Michel Barnier said that key questions would be whether an extension increases the chances for the ratification of the Withdrawal Agreement or whether the UK wants a bit more time to rework the Political Declaration on the future UK-EU relationship. Speaking to reporters after the meeting, Mr Barnier [also](#) said:

My feeling is that a longer extension needs to be linked to something. There needs to be a new event, a new political process and obviously I cannot attempt to preempt such a process.

### 3.3 A longer extension requires UK participation in the EP elections

EU documents have made clear that a longer extension would require the UK to participate in the European Parliament elections on 23-26 May 2019, although there have been different interpretations as to the date by which the UK would need to have left the EU in order to avoid participation in the elections. The European Commission's view that in order to have legal certainty the UK would need to leave prior to European Parliament elections is reflected in the European Council conclusions on 21 March that the Article 50 can only be extended up to 22 May if the UK does not take part in the EP elections.

There were previous indications from some EU sources that the UK could avoid participation in the EP elections provided it left the EU by the date of the first sitting of the new EP on 2 July.<sup>10</sup> On 15 March, the *Financial Times* reported on a [leaked Council of EU document](#) circulated to EU Permanent Representatives that day which said that if there is an extended Article 50 period the UK would have to leave the EU by 1 July if it had not taken part in the EP elections on 23-26 May.

The Council document warned that EU institutions would "cease being able to operate in a secure legal context" if the UK remained in the EU after 1 July without having held EP elections, as EU acts "adopted with the participation of an irregularly composed parliament would be open to legal challenge which would put the security of legal relations in the Union seriously at risk, on a very large scale". It said that if a short extension is initially agreed, no further extension would be possible beyond the date of the EP elections if the UK had not taken part. Similarly, any longer extension would "terminate its effects" before the new EP meets on 2 July if the UK had not taken part in the elections.

The UK Government [note](#) on 'Parameters for Extending Article 50' published on 14 March 2019 also pointed out that if the UK were to seek an extension and hence remain a Member State beyond 1 July it would need to participate in the EP elections for two reasons:

first, the EU Treaties provide that EU citizens have the right to be represented in the EP, and there is no legal mechanism by which the UK could return MEPs to the new EP other than by participating in the elections; and

second, for it to perform its functions, including the appointment of the Commission and the adoption of any legislation, the EP needs to be properly constituted – putting the functioning of the EU's institutions at risk.

[A European Commission document](#) circulated on 20 March, however, stated that a short extension should be limited until 23 May without UK participation in the EP election. It stated that for a longer extension beyond this date, the UK would be obliged to hold EP elections. It stated that an extension beyond 23 May without UK participation in the election would

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<sup>10</sup> This was also the [view](#) of the former head of the legal service of the Council of the EU, Jean-Claude Piris.

create legal uncertainty and warned of a scenario whereby the UK then seeks a longer extension after 23 May or decides to revoke Article 50 without then having representation in the EP and with some of the UK's EP seats having been reallocated. The Commission warned that the failure to organise EP elections in the UK

could make the formal constitution of the new European Parliament illegal and this illegality would infect all its subsequent decisions, including the appointment of the new European Commission or our future EU budget. Every decision would be open to legal challenge.

The [letter](#) from President Juncker to President Tusk on 11 March 2019, referring to the new texts agreed with the UK that evening, stressed that the UK's withdrawal from the EU should be complete before the EP elections and that if the UK had not left by then, "it will be legally required to hold these elections, in line with the rights and obligations of all Member States as set out in the Treaties".

After the Prime Minister had sent her letter to Mr Tusk seeking an Article 50 extension on 20 March (proposing an end date of 30 June), a spokesperson for President Juncker said that [Mr Juncker had spoken to Mrs May](#) on the phone and that Mr Juncker had "clearly warned the prime minister against including a date for the extension that will be after the European parliament elections", and had repeated his advice that "the withdrawal has to be complete before May 23, otherwise we risk facing institutional difficulties and legal uncertainty, given the European elections date". The spokesperson emphasised that:

European elections have to be held if the extension date is beyond May 23. This is the position of the commission and this is what the president informed the prime minister again.

There are different interpretations as to whether EU acts would be legally valid if the UK remained a Member State but had not elected MEPs by 2 July.<sup>11</sup> Advice from the European Parliament legal service [reportedly](#) states that "there is no rule hindering" the EP being constituted "without all seats having been allocated at the time of the first sitting". However, if the UK did not take part in the EP elections while remaining a Member State it would be in breach of EU Treaty Articles providing that EU citizens should have the right to be represented in the EP and to "participate in the democratic life of the Union" (Article 10 TEU). EU citizens would also be deprived of their right to vote and to stand as candidates in elections to the EP in their Member State of residence, under the same conditions as nationals of that State (Article 20 TFEU).

There had been suggestions that the EU could agree a protocol which would allow the UK not to hold EP elections if Article 50 is extended into July. This might involve the UK holding a ['catch-up' election](#) at a later date if it decided to remain in the EU (for example if Article 50 was extended in order for another referendum to be held). The UK Advocate General at the CJEU [suggested](#) that the issue could be addressed by extending the mandate of existing UK MEPs or allowing the UK to send national

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<sup>11</sup> See the blog by Professor Steve Peers, [Brexit and Extending EU Membership: The Legal Issues](#), 21 March 2019

parliamentarians to sit as MEPs for a while. However, the leaked Council document on 15 March said that a Treaty change would be required to allow the UK to extend Article 50 without holding EP elections. This would need to be ratified in all Member States and would therefore not be feasible in a short timeframe.

### 3.4 A definite decision on UK participation in the EP elections must be made by 12 April

The European Council has agreed to extend Article 50 until 12 April 2019 if the WA has not been approved, by which date the UK would need to notify the EU of its intentions. This reflects the need for some Member States to have certainty by this date as to whether the UK is remaining in the EU for a longer period (and therefore participating in EP elections) given that some of the UK's EP seats will be reallocated to them. 12 April is also the date by which returning officers in the UK would need to publish notice of the EP election.

The EU has adopted [legislation](#) reallocating some of the UK's seats in the European Parliament to other Member States. 27 of the UK's seats will be [redistributed](#) to 14 other EU Member States, with 46 seats put by for future EU enlargements. The biggest gainers will be Spain and France with five additional seats each, and Italy and the Netherlands with three additional seats each. Ireland will get an additional two seats.<sup>12</sup>

This legislation, however, includes a clause stating that the new distribution will only come into effect if the UK has left the EU by the time the new Parliamentary term starts. Nevertheless, the [Member States that will be allocated additional seats](#) when the UK leaves will need certainty in preparing for the elections.

The European Commission document on 20 March [stated](#) that any Article 50 extension should be limited to 23 May without the UK taking part in the EP elections, and with the agreed reallocation of seats applying, or beyond 23 May with the UK participating in the elections with the existing allocation of seats. It warned:

A change of policy in the United Kingdom – a phenomenon with which we have become familiar over the past months – could lead to a late election in the United Kingdom and persons validly elected in 14 Member States not taking up their positions. The party political consequences in the Member States concerned are unpredictable. In turn, this would create uncertainty as to the balance and majorities in the European Parliament.

It said that “given the Member States need to organise their elections in practice, finalise the list of candidates and print ballots, these 14 Member States would need to know at the latest by mid-April what the United Kingdom will do”.

The UK Government [note](#) on ‘Parameters for Extending Article 50’ published on 14 March 2019 also explained that for the UK to participate in

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<sup>12</sup> The other gainers will be Denmark, Estonia, Croatia, Austria, Poland, Romania, Slovakia, Finland and Sweden with one additional seat each.

the EP elections, returning officers must publish notice of the poll by 12 April, before which the Government must appoint the date of the poll by Order made under the *European Parliamentary Elections Act 2002*.

### 3.5 An additional extension to Article 50 could be agreed

The European Council conclusions on 21 March held out the possibility of an additional extension to Article 50 being agreed after 12 April, should the UK decide to participate in the EP elections.

The [European Commission document](#) circulated on 20 March had advised that “under all circumstances”, regardless of whether a short or longer extension was agreed:

the European Council should envisage a single extension, rather than a series of extensions, which would keep the European Union in limbo for an extended period of time.

The [Council document on 15 March](#) had stated that in principle there would be nothing to stop more than one extension, but “decisions to extend may not be repeated in a manner that would make the duration of the withdrawal indefinite” and that “such extension must respect the principle of proportionality between its duration and the purpose it is intended to serve”.

The document also stated that account should be taken of the need to ensure the necessary separation between the withdrawal procedure and the negotiation of a future relationship. It noted that a negotiation on the future relationship can only take place with a third country once the withdrawal has taken place and that as a consequence “a prolonged extension would result in a significant postponement of the opening of that negotiation”.

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