



Can the UK extend the Brexit deadline?

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It is becoming increasingly likely that the UK will have to request extension of the Article 50 deadline. But a longer extension might mean that the UK would have to hold European Parliament elections.

The UK is scheduled to leave the EU in just seven weeks' time, but the outcome of the Brexit process is still highly uncertain. Britain could leave without a deal, or with the current deal, perhaps softened through a revision of the political declaration – the part of the withdrawal package that relates to relationship the UK and EU want after Brexit. Or there could be a general election, or a second referendum. Whichever of these options comes to pass, it is becoming increasingly likely that the UK will have to ask for the extension of the two-year Article 50 process.

After European leaders endorsed the Brexit withdrawal package on November 25th, the EU has pushed on quickly with the ratification process, to allow Britain to leave as planned on March 29th. The Council has already adopted a decision on the signing of the withdrawal agreement and forwarded the text to the European Parliament for its approval. However, the UK Parliament – which also has to pass the deal – has made very little progress. Every day without UK ratification is a day closer to a damaging no deal Brexit.

After the House of Commons rejected the withdrawal agreement on January 15th, and then voted for Prime Minister Theresa May to replace the so-called Irish backstop with “alternative arrangements”, speculation has grown that the UK will have to ask the EU-27 for an Article 50 extension. The EU has made it [clear](#) that it will not change the text of the Irish protocol. But without a substantial change to the withdrawal agreement, it is unlikely that May will get Commons to support it. The government is working to bring a revised deal to Parliament as soon as possible. May will make a statement to Parliament about the state of play no later than February 13th – which could pave the way for lawmakers to vote on May's deal on Valentine's Day.

When British politicians talk about an Article 50 extension they often give the impression that it is just a question of asking politely. But they ignore the fact that Brexit is a negotiation, not a monologue. The 27 member-states must agree unanimously to the UK's request to extend the Article 50 deadline.

There is growing frustration with the British political class on the continent. EU officials and European politicians have long seen Brexit as an unwelcome distraction from other pressing challenges; instead of working out how to hold back the populist tide in the upcoming European Parliament elections, they have been forced to spend time reacting to the latest twists and turns in the Brexit saga. In fact, some flinch at the thought of the UK hanging around in the EU for even a little bit longer than planned. After two years of Brexit wrangling, the UK's positive contributions to the European project, such as its support for the single market and enlargement, are fading into history.

This is not to say that the 27 EU leaders would oppose outright a British request for an extension of the Article 50 period. There is a distinction to be drawn between EU officials, who have grown impatient, and political leaders, who understand how brutal politics can be; they have some, albeit diminishing, sympathy for May. But most importantly, the leaders worry that failure to strike a Brexit deal will affect their own public standing. A no deal exit would hurt both the UK and other European economies and businesses.

But before the EU member-states agree to extend the Brexit process they will want the British government to explain how much time it needs and what it plans to achieve with this extension. This year will be a busy one for the EU: European citizens are going to the polls in May to elect a new European Parliament, the current European Commission will pass the baton to its successor and talks over the EU's budget for 2021-2027 will enter their final stages. EU leaders will be reluctant to let Brexit get in the way.

As a result, if Brexit needs to be delayed, many EU officials would prefer a so-called 'technical extension' of only a few weeks. The problem is that few in Brussels and London believe a short extension would be sufficient to enable the UK to ratify the withdrawal agreement. The so-called meaningful vote on the withdrawal agreement is not the only hurdle May faces. Even if the prime minister manages to get a parliamentary majority for the withdrawal package, she would still have to push through the Withdrawal Agreement Implementation Bill. This aims to put into UK law the provisions of the withdrawal agreement and needs to be passed before the UK's formal exit date. British parliamentarians could use votes on the Bill to obstruct the Brexit process, for example by adding amendments which provide for another referendum or are [incompatible](#) with the withdrawal agreement.

An Article 50 extension beyond the first plenary session of the new European Parliament, scheduled for July 2019, would complicate EU business. Were the UK a member-state at the time of the European Parliament elections between May 23rd and 26th, it would be [obliged](#) to hold elections for Members of the European Parliament in time for the first parliamentary session. EU law mandates that British and EU citizens residing lawfully in the UK should elect representatives.

But this would put both the UK and EU in an awkward position considering Britain's imminent departure from the bloc. It is hard to see how the Conservatives and the Labour Party, both of which have committed to Brexit, could contest European Parliament elections without making a mockery of the vote.

European elections in the UK would also complicate other member-states' polls. The European Council has already allocated 27 of the 73 British seats to other member-states (the remaining 46 seats will be distributed among future acceding countries). But these countries will not be able to take up their extra seats until the UK has formally left the EU. Member-states like France, Italy and Spain (those three

would together receive 13 of the available British seats) would probably have to put the election of extra MEPs on hold – a prospect that does not appeal to national parties which hope to benefit from the redistribution of the British seats.

Having European elections in the UK would also complicate the process of forming political groups in the new European Parliament. According to the Parliament's rules of procedure, a group must have at least 25 MEPs from one quarter of the member-states. Including British MEPs could make the formation of a group easier in the first instance. But then the group could be at risk of collapse within a few weeks or months when UK exits the EU.

Many British observers believe that if the UK asked for an extension, the EU-27 would find a way around this 'parliamentary problem'. Richard Corbett, a Labour MEP, [suggested in 2016](#) that the UK could appoint British parliamentarians to serve as MEPs in the period between the European Parliament elections and Britain's formal withdrawal from the EU. The supporters of this idea point to the procedure used for countries that are joining the EU – some of which have sent national MPs to be temporary representatives in the European Parliament before holding direct elections.

But new member-states were allowed to send MPs to the European Parliament on an interim basis because the accession treaties, which constitute EU primary law, provided for a temporary derogation from the obligation to hold elections. This exemption did not permanently deprive the citizens of their treaty rights. It seems therefore that the EU would have to revise the EU treaties to enable the British to escape their treaty obligation to hold elections. Adding a derogation for the UK to the withdrawal agreement would not do the trick; international agreements concluded by the EU are lower in the hierarchy of EU law and by definition they have to be compatible with the EU primary law. But treaty revision is an avenue that EU leaders will be reluctant to explore. This could invite other member-states to present their own wish-list of what they dislike in the current treaties, delaying a swift revision.

Some Council officials believe that if the EU failed to provide such an exemption for the British in primary law, the new European Parliament could be deemed unconstitutional. This, in turn, could have implications for the validity of the decisions taken by the European Parliament, including the appointment of the new Commission. Other lawyers, however, are less pessimistic. In 2017, the European Parliament's legal service argued that the UK's failure to elect MEPs – although an obvious breach of EU law – would not mean that the new Parliament was improperly constituted. In other words, the UK would be at fault but the EU could function normally. The Commission could open a disciplinary procedure against London, but by the time the case reached the Court of Justice of the European Union the UK would probably have already left the EU. Some officials in Paris also argue that if the European Council wants to give the UK the chance of staying in the EU for say another nine months, some legal solution, such a protocol that can be quickly ratified, will be found. But it is easier said than done; it took two years to ratify changes to a single article of the Treaty on the Functioning of the EU (article 136) in order to introduce a legal basis for the treaty creating the European Stability Mechanism.

May is determined that the UK will leave the EU on March 29th. But she has a track-record of changing her mind on big Brexit issues. The Commons, which does not want a no deal exit, could eventually instruct the prime minister to ask Brussels for more time. May might then find the opinion of the European Parliament's legal service convenient, and ask the EU-27 to extend the Brexit deadline while exempting her government from the obligation to hold European elections. She could make the point

that holding elections would incur unnecessary costs, and that voters, knowing that they were electing MEPs only for a few weeks or months, might protest by voting for extremists or joke candidates.

But EU leaders and institutions will certainly think twice before they help May to avoid holding elections in the UK. Why should they provide solutions to problems created by the UK? Such a move could play into the hands of eurosceptic and anti-establishment parties across Europe, who would accuse the EU of hypocrisy. The European Parliament has tried to encourage participation in the 2019 elections by launching the campaign with the slogan “This time I’m voting”. Turnout in European elections has been in decline ever since 1979 and the EU wants to reverse this trend. Helping May to disenfranchise her own citizens would go against the EU’s own pledge and could result in a public backlash.

UK ministers and EU officials originally wanted the withdrawal agreement to be finalised by the autumn of 2018 to allow sufficient time for ratification before March 29th. But negotiating the deal took longer than May expected and she will almost certainly have to ask the EU-27 to extend the Brexit deadline. This is not ideal for either party, and will involve some creativity and flexibility on both sides. But as it stands, an extension of Article 50 seems inevitable, and the real debate is over how long.

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