



BRIEFING PAPER

Number 8496, 21 March 2019

Extending Article 50: could Brexit be delayed?

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Summary

Article 50 and the Withdrawal Agreement

As provided for under Article 50 TEU, the UK will cease to be a Member State of the EU on 29 March 2019, two years to the day since issuing its notification, unless it revokes its notification to leave or agrees an extension of the Article 50 negotiating period with the EU. Under Article 50, the date of exit from the EU can be delayed if the EU agrees to this unanimously.

The Government has been defeated twice in the House of Commons, on 15 January 2019 and 12 March 2019, on motions seeking approval for the Withdrawal Agreement (WA) and the Political Declaration (PD) on future UK-EU relations agreed by the European Council in November 2018.

The second defeat came after the Government had agreed a new instrument with the EU relating to the most contentious part of the WA, the Northern Ireland backstop, giving legal 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.

Government, Opposition and EU views on Article 50 extension

The Prime Minister had repeatedly stated her opposition to extending Article 50. However, on 26 February, the Prime Minister committed the Government to holding a vote in the House of Commons on 14 March on extending Article 50, if the Government had not won a 'meaningful vote' in the Commons by 12 March and if the House subsequently voted against leaving the EU without an agreement. This followed reports that Government Ministers and Conservative MPs were preparing to vote for a cross-party amendment guaranteeing Parliamentary time for legislation providing for a vote on Article 50 extension.

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 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 and PD by 20 March. Alternatively, the motion noted that if these 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 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 'meaningful vote' as soon as possible and that the extension would be required to pass legislation to implement the WA. President Tusk responded that a short extension would be possible, but would be conditional on a positive vote on the WA.

Statements from the EU institutions and Member States have previously suggested a willingness to agree to an Article 50 extension if the UK

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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. The EU continues to affirm that negotiations on the WA will not be re-opened.

Scenarios in which an Article 50 extension would be required

As the motion adopted on 14 March acknowledges, an extension of Article 50 would be required if the WA is approved shortly before 29 March, in order to provide time to pass legislation to prepare for Brexit. Legislation to implement the WA must be enacted prior to the UK leaving the EU.

If the UK leaves the EU without a deal, then more time may also be needed to pass other legislation required to prepare for Brexit, including the Trade Bill, Agriculture Bill, Fisheries Bill, Immigration Bill, Healthcare (International Agreements) Bill and the Financial Services Bill, as well as statutory instruments required to prepare the statute book for Brexit. 247 of an estimated 600 statutory instruments required to prepare the statute book for exit day had made their way through Parliament as of 12 March 2019.

The Labour party has previously called for a General Election if the Government is unable to get Parliamentary support for a withdrawal agreement. A vote of confidence under the *Fixed-term Parliaments Act 2011* was tabled by Jeremy Corbyn following the rejection of the WA of 15 January but was unsuccessful. If there was another no confidence vote which succeeded, at least seven weeks would need to pass before a General Election could be held (including two weeks in which another Government could be formed). If the Government itself decided to hold an election, at least five weeks would be required.

A longer extension would be required under the scenario advocated by the cross-party People's Vote campaign of holding another referendum. In order to hold another referendum Parliament would need to pass legislation to allow for the poll to take place. This would also involve question testing by the Electoral Commission and be followed by a statutory campaign period of 10 weeks. The amount of time required in Parliament would be particularly hard to predict.

Estimates as to how long it would take to hold a referendum vary from 16 weeks (the Liberal Democrats), to 22 or 28 weeks depending on the question (UCL Constitution Unit) to one year (the Government). This would mean the earliest a referendum could take place is July under the Liberal Democrats scenario or late August or October under the Constitution Unit's timetable.

Role of European Parliament

One complication of extending Article 50 beyond May 2019 is that European Parliament (EP) elections are due to take place on 23-26 May 2019 and are currently planned on the basis of the UK not taking part.

The final sitting of the outgoing EP is scheduled for 18 April 2019 and the new Parliament will sit for the first time on 2 July. This creates a further

complication given that the EP's consent is required for the WA. It would be possible for the EP to have its consent vote on the WA prior to UK approval, but the intention within the EP is to wait until the House of Commons approves the WA before holding its own vote. Alternatively, if the WA has not been approved by the EP by 18 April 2019, a recall of the outgoing Parliament is possible up until the newly elected EP sits for the first time on 2 July. EU law provides that the outgoing EP remains in office until the new one sits for the first time, and the EP's rules of procedure provide that the President of the Parliament can recall the EP following a request by the majority of its Members or from the Commission or the Council.

While the WA has to be approved by the EP, the PD does not. If an extension of Article 50 therefore resulted in a change to the PD but not the WA (and the WA had already been ratified by the EP) then the EP would not need to be recalled to give its approval.

UK participation in the EP elections if Article 50 extended beyond 1 July

A leaked Council of the EU document on 15 March indicated that an extension of the Article 50 period until 1 July would be possible without the UK participating in EP elections. No extension beyond this point would however be possible if the UK had not held EP elections. The European Commission has however said that UK participation in the elections would be required if the UK was still a Member State on 23-26 May even if it planned to leave the EU shortly after. It has warned of legal uncertainty otherwise, given that the UK could choose to revoke Article 50 between the election dates and the 1 July or seek to delay Brexit for a longer period.

The EU has already adopted legislation reallocating some of the UK's seats in the European Parliament to 14 other Member States, although this only comes into effect if the UK has left the EU by the time the new Parliamentary term starts. The European Commission has stated that there needs to be clarity about the UK's intentions by mid-April so that the 14 Member States with additional seats can prepare accordingly. If the UK is to take part in the EP elections, returning officers must publish notice of the poll by 12 April.

According to advice from the EP's legal service "there is no rule hindering" the EP being constituted without all seats having been allocated at the time of the first sitting. However, the leaked EU document on 15 March 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 and that this could leave EU acts open to legal challenge. A failure to hold elections in the UK would in any case mean that the UK would be in breach of EU Treaty Articles which provide that EU citizens have the right to be represented in the EP and to vote and stand in EP elections. This could lead to a legal case against the UK at the Court of Justice of the EU (CJEU).

There have 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 has suggested that the issue could be addressed by extending the

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mandate of existing UK MEPs or allowing the UK to send national parliamentarians to sit as MEPs for a while. However, the leaked EU 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.

One other complication is that following the EP elections the process will also begin to appoint the new President of the European Commission and other Commissioners, with the new Commission not taking office until the beginning of November. This could delay matters further if Article 50 negotiations go beyond 1 July.

1. The Article 50 process and the Withdrawal Agreement

1.1 Article 50

Article 50 of the Treaty on European Union (TEU) provides that any Member State may decide to withdraw from the EU in accordance with its own constitutional arrangements. It also provides that the EU and the withdrawing state shall negotiate an agreement setting out arrangements for its withdrawal. The withdrawing Member State will cease to be a member of the EU when the withdrawal agreement comes into force, or failing that, two years after notifying the EU of its intention to leave, unless the European Council agrees to extend the Article 50 period.¹

In the UK's case, the notice to withdraw from the EU was issued on 29 March 2017. The UK will therefore leave the EU on 29 March 2019, unless a withdrawal agreement with the EU provides for another exit day, or the UK Government withdraws the Article 50 notice, or there is agreement with the EU to extend the Article 50 notice period.

An extension of Article 50 requires that the UK requests it and the remaining EU27 Member States agree to this unanimously.

1.2 The Withdrawal Agreement and Political Declaration

A Withdrawal Agreement (WA) was approved by the UK Government and EU27 leaders at the European Council on 25 November 2018. This provides for the UK to leave the EU on 29 March 2019 but will only come into force provided it is first approved by both the UK (meaning approval by the House of Commons and passage of legislation to implement the WA) and by the EU (requiring approval by both the European Parliament and Council of the EU).²

A Political Declaration (PD) setting out the framework for the future EU-UK relationship was also agreed on 25 November 2018.³ This requires approval by the House of Commons alongside the WA, in accordance with Section 13 of the *European Union (Withdrawal) Act 2018*, but does not require implementing legislation in the UK or ratification by the European Parliament and Council of the EU.

In the vote on the WA and PD in the House of Commons on 15 January, the Government's motion was defeated by 432 votes to 202. Following the debate and vote on the Government's [next steps](#) in the Brexit process on 29 January, the Prime Minister [set out](#) her intention to seek further negotiations with the EU on the WA, in order to obtain changes to the most

¹ 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.

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

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

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contentious element of the WA, the Northern Ireland/Ireland 'backstop', that would be acceptable to a majority in the House of Commons.⁴ The EU has indicated it was unwilling to re-open negotiations on the WA, although it would be willing to change the wording of the PD in the hope that a more specific framework for the future relationship may boost the chances of the WA winning majority backing in the Commons.

On 26 February, the Prime Minister committed the Government to holding a vote in the House of Commons on seeking an Article 50 extension on 14 March, if the WA and PD had not been approved by the House by 12 March and if the House also rejects leaving the EU without a deal.

On 11 March, the Government [announced](#) that it had agreed a new instrument with the EU relating to the WA which gives legal force to the EU's commitment to negotiate a future agreement to replace the backstop arrangements and confirms that the UK can seek arbitration if the EU does not act in good faith in the negotiations. In addition, a supplementary statement to the PD was agreed, referring to a number of measures to expedite the process of negotiating and bringing into force the future agreement⁵. A [second 'meaningful vote'](#) was held on the WA and PD on 12 March with the Government again defeated, this time by 391 votes to 242.

The Commons then voted against leaving the EU without a deal on 13 March, adopting an amended Government motion by 321 votes to 278. The Government whipped Conservative MPs to vote against the amended motion because it did not support the amendment. According to the original Government [motion](#), the House would decline to approve leaving the EU without a deal on 29 March while noting that leaving without a deal remained "the default in UK and EU law" unless the House and the EU ratify an agreement. The [amendment](#) to the motion, proposed by Yvette Cooper MP and supported by most opposition and some Conservative MPs removed the reference to the specific date of the 29 March and the caveat about no deal being the default and simply rejected the UK leaving the EU without a deal.

The Commons then adopted a Government [motion](#) on the 14 March agreeing that the Government would seek to agree an Article 50 extension with the EU (see section 2.4). 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 legitimately . . . resubmit to the House the same proposition or substantially the same proposition" as that of the previous week.

⁴ 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.

⁵ See House of Commons Library Briefing Paper CBP8525 [The 'Strasbourg package'](#), 13 March 2019.

It remains the case that if no withdrawal agreement is approved by the House of Commons, either by 29 March 2019 or in an extended Article 50 period if this is agreed, then the UK will leave the EU without a deal unless Article 50 is revoked.⁶

1.3 Would new legislation be required?

The [European Union \(Withdrawal\) Act 2018](#) (EUWA) makes arrangements for domestic law after the UK has left the European Union. Among other things it repeals the [European Communities Act 1972](#) and converts most EU law into 'retained EU law': a new type of domestic law. Section 20 of that Act assumes that Brexit will take place at 11.00pm on 29 March 2019 (a date and time known as 'exit day'). All of these major changes therefore take place on exit day by default.

A Minister may by regulations amend the definition of 'exit day' "to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom". In practice this means these regulations can only change the date and time of exit day to prevent domestic law from diverging from EU law on this point. 'Exit day' could (for instance) be changed by regulations to reflect an agreed extension to Article 50⁷.

In her [written statement](#) to the House of Commons on 15 March 2019, the Prime Minister said that as soon as possible following agreement at the EU level on extending Article 50 the Government will:

bring forward the necessary legislation to amend the definition of exit day in domestic legislation. This statutory instrument will be laid, before it is made, under section 20(4) of the EU (Withdrawal) Act 2018.

This legislation is subject to the draft affirmative procedure and so would need to be actively approved in each House. The legislation would give effect to any agreement with the EU on an extension, so would not be laid before Parliament until that agreement had been reached.

The EUWA does not explicitly state whether there are any special constitutional requirements for the UK to request an extension to Article 50. An [article](#) on the UK Constitutional Law Association blog by Robert Craig of Durham University Law School argues that any extension could be requested and agreed to by the UK Government acting under the Royal Prerogative.

⁶ On 10 December 2018, the Court of Justice of the EU ruled that a Member State that had issued a notification to leave the EU under Article 50 can revoke the notification unilaterally as long as a withdrawal agreement has not come into force, and the two year period (or any extended period) following the Article 50 notification has not expired. For further analysis see House of Commons Library Briefing Paper CBP8461 [Brexit: Article 50 TEU at the CJEU](#), 10 December 2018.

⁷ See House of Commons Library Insight, [What is "exit day"? Dispelling misconceptions about the extension of Article 50](#), 19 March 2019 and Brigid Fowler, [Changing EU 'exit day' by Statutory Instrument](#), Hansard Society, 18 March 2019

2. UK and EU discussion of Article 50 extension

2.1 Reports of discussions

There were [reports](#) in early January 2019 that UK and EU officials were discussing the possibility of extending Article 50. This appeared to be in order to give the UK Government more time to get the Withdrawal Agreement (WA) approved by Parliament and prevent the UK leaving the EU with no deal (although the Government [denied](#) the claims).

On 12 January, *The Independent* [reported](#) that a Cabinet Minister had suggested that a short extension of Article 50 would be required even if the WA was approved by Parliament, in order to get the necessary legislation to implement the WA and other necessary legislation to prepare for Brexit through Parliament by 29 March.

On 13 January, *The Guardian* [reported](#) that the EU was expecting a request from the UK for an extension to Article 50 and would be prepared to agree to one to July at least, and that a special European Council meeting would be convened should a UK request for extension be received. It cited EU sources as saying that the length of the prolongation of the negotiating period would be determined based on the reason put forward by the Prime Minister for the delay. This could be a shorter period in order to give the Prime Minister more time to get the WA through Parliament, or a longer period in order for a general election or referendum to be held.

There has also been [speculation](#) that EU leaders would be prepared to extend Article 50 in order to re-open talks if there was a major shift in the UK position, for example in favour of a new relationship similar to that of [Norway](#) (involving continuing membership of the Single Market as a non-EU member of the European Economic Area).

2.2 Government and Opposition statements on extending Article 50

The Prime Minister has been clear that she intends to deliver on the 2016 referendum result in taking the UK out of the EU, and that the Government will not revoke Article 50. She has also spoken [against](#) the possibility of extending Article 50 and has [repeatedly](#) stated that the UK will leave the EU on 29 March 2019.

Speaking to the House of Commons Liaison Committee on 29 November 2018, the Prime Minister warned that an Article 50 extension could lead to further uncertainty. She [said](#): “What is clear is that any extension to article 50, anything like that, reopens the negotiations, reopens the deal. And at that point the deal can go, frankly, in any direction”.

On 14 January 2019, the Prime Minister [said](#): “We’re leaving on 29 March, I’ve been clear I don’t believe we should be extending article 50 and I don’t believe we should be having a second referendum”.

During the debate in the House of Commons held on 29 January 2019 in relation to the Government's statement on how it intends to proceed with the Brexit process following the Commons' rejection of the WA on 15 January, the Prime Minister was asked about the importance of honouring the 2016 referendum result and ruling out any extension of Article 50. She responded:

I absolutely agree that we need to deliver on the result of the referendum. Let me add that when people talk about things such as delaying article 50, that does not resolve the issue of what deal we should have in leaving the European Union.

Following the Prime Minister in the debate, Labour party leader Jeremy Corbyn said that it is "now inevitable" that the Government will have to extend Article 50 "in any scenario", given that it is "not even close to being prepared" if it is serious about keeping the possibility of "no deal" on the table. Mr Corbyn [said](#)

And even if the Prime Minister's deal were to somehow achieve a majority in this House next month there is no chance that the necessary legislation, primary legislation and an extensive catalogue of secondary legislation – I believe 600 statutory instruments – could clear this place between now and the 29 March.

Foreign Secretary Jeremy Hunt [indicated](#) on 31 January 2019 that an extension of Article 50 could be requested if the WA is approved shortly before 29 March, in order to provide for extra Parliamentary time to pass legislation to prepare for Brexit.

Should the House of Commons approve the WA, Parliament will also need to pass the envisaged European Union (Withdrawal Agreement) Bill in order to implement the WA in domestic law.

Standing in for the Labour leader at Prime Minister's Questions on 6 February, Shadow Foreign Secretary Emily Thornberry [said](#) that the "sensible, cautious thing to do at this late stage is to seek a temporary extension of Article 50 so we have time to see if the negotiations succeed or, if they do not, to pursue a different plan".

Following her meeting with European Commission President Jean-Claude Juncker on 7 February, the Prime Minister [said](#)

I'm clear that I'm going to deliver Brexit, I'm going to deliver it on time, that's what I'm going to do for the British public. I'll be negotiating hard in the coming days to do just that.

On 13 February 2019, Brexit Secretary Stephen Barclay told the BBC Today [programme](#) that an extension of Article 50 was not the Government's plan and said that the Prime Minister had been clear that "we are committed to leaving on the 29th March" and that it was apparent to him from recent talks in the EU that "any extension is not a unilateral decision". He referred to a meeting in Strasbourg the previous day and said:

What came over was actually that it is not in anyone's interests to have an extension without any clarity. It is actually very disruptive to the European parliament.

They have, obviously, elections for top jobs, they have a Commission that will be formed, the European Parliamentary elections at the end

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of May, so there is no desire on the European side to see what one described to me as an 'extension in darkness', where there is no clarity as to why we are extending.

Mr Barclay also spoke to [BBC Breakfast news](#) later in the morning, and reiterated that the Government plan was to leave the EU on 29 March and added:

It's not simply a British decision, whether there's an extension or not is not a unilateral matter. It would require agreement from the Member States, all 27. One doesn't know what conditions would be attached to that if it were sought, and what came across from the discussions we had in Brussels and Strasbourg with European leaders is there's no desire from the European leaders to prolong this, like many of the businesses watching your programme they want to see us get on with it . . .

2.3 The Cooper Bill

Several [amendments](#) were tabled in relation to the Government motion on the Brexit process in the House of Commons on 29 January 2019. This included one from Yvette Cooper MP which would have guaranteed parliamentary time for her [Private Member's Bill](#), which in turn would have given the Commons the opportunity to insist that the Prime Minister seek an extension of Article 50 until the end of 2019 if the House of Commons had not approved a withdrawal agreement by 26 February 2019. This amendment was defeated by 321 votes to 298.

An amendment tabled by Rachel Reeves MP to seek a two-year extension of Article 50 if there was not a deal in place by 26 February was also defeated, by 322 votes to 32.

In her [statement](#) to the House of Commons on the Brexit negotiations on 12 February, the Prime Minister said that the Government would make a statement on 26 February and table an amendable motion relating to the statement to be debated and voted on the next day, if a majority in the House for a withdrawal agreement and a political declaration had not been secured by then.

The Government also tabled a [motion](#) on the Prime Minister's statement of 12 February to be debated on 14 February. An [amendment](#) to the motion tabled by SNP Westminster leader Ian Blackford calling on the Government to request an extension of Article 50 by at least three months was defeated by 315 votes to 93. The Labour party frontbench abstained on this amendment. It had previously supported the Cooper and Reeves amendments on 29 January, and said it [would support](#) a new Yvette Cooper amendment on 27 February.

Ms Cooper presented a [revised version](#) of her Bill on 12 February 2019 with cross-party support. She [said](#) that if the Prime Minister had not secured Commons support for an agreement by 26 February, then a cross-party amendment would be tabled that week in order to make time for the Bill. The Bill had a new trigger date of 13 March, by which time if a withdrawal agreement has not been approved the Commons would vote either to

agree a no-deal Brexit or to require the Prime Minister to seek an extension of Article 50.⁸

The [amendment](#) to make parliamentary time for the Bill was tabled for the debate on the Government's motion on 27 February by two Labour MPs (Yvette Cooper and Jack Dromey), two Conservative MPs (Dame Caroline Spelman, Sir Oliver Letwin), one Liberal Democrat MP (Norman Lamb) and one Plaid Cymru MP (Ben Lake).

2.4 Prime Minister commits to Commons' vote on Article 50 extension

In her [statement](#) on 26 February 2019, the Prime Minister committed the Government to holding a vote in the House of Commons on 14 March on extending Article 50, if the Government had not won a meaningful vote in the Commons by 12 March and if the House subsequently votes against leaving the EU without an agreement. This came four days after three Cabinet Ministers had 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, and reports that several Government Ministers and Conservative MPs were prepared to vote for the Cooper amendment.⁹

Mrs May said that the Government would hold a second 'meaningful vote' on the WA and PD by 12 March at the latest. If this vote was lost, the Government would then table a motion to be voted upon on 13 March asking the House if it supports leaving the EU on 29 March without a withdrawal agreement and a framework for a future relationship.

If the Commons then voted against this proposition, Mrs May said that the Government would then table a motion to be voted upon on 14 March on

whether Parliament wants to seek a short, limited extension to article 50, and, if the House votes for an extension, seek to agree that extension approved by the House with the EU and bring forward the necessary legislation to change the exit date commensurate with that extension.

Mrs May said that these commitments fit the timescale set out in the Cooper Bill. However, unlike the Cooper Bill, these new commitments maintain for the Prime Minister full constitutional control over whether and for how long the UK might seek an extension of Article 50.¹⁰

Mrs May also reiterated that she did not wish the Government to arrive at the point where it would be necessary to request an Article 50 extension:

But let me be clear—I do not want to see article 50 extended. Our absolute focus should be on working to get a deal and leaving on 29

⁸ See House of Commons Library Insight, [Yvette Cooper's Private Member's Bill explained](#), 19 February 2019.

⁹ 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.

¹⁰ See House of Commons Library Insight [The Brexit timetable: One promise. Two weeks. Three key votes](#), 1 March 2019.

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March. An extension beyond the end of June would mean the UK taking part in the European Parliament elections. What kind of message would that send to the more than 17 million people who voted to leave the EU nearly three years ago now? And the House should be clear that a short extension—not beyond the end of June—would almost certainly have to be a one-off. If we had not taken part in the European Parliament elections, it would be extremely difficult to extend again, so it would create a much sharper cliff edge in a few months' time. An extension cannot take no deal off the table. The only way to do that is to revoke article 50, which I shall not do, or to agree a deal.

In response to the new commitments set out by the Prime Minister, the cross-party amendment to make time for the Cooper Bill was withdrawn. However, Ms Cooper tabled a new amendment confirming the new commitments. This was approved by the Commons by [502 votes to 20](#).

Following the Government's second 'meaningful vote' defeat on 12 March, the Prime Minister [confirmed](#) that there would be a vote the next day on a motion rejecting withdrawal from the EU without an agreement on 29 March, and that should the Commons reject leaving the EU without a deal there would then be a vote on seeking an Article 50 extension on 14 March. Mrs May said:

If the House votes for an extension, the Government will seek to agree that extension with the EU and bring forward the necessary legislation to change the exit date, commensurate with that extension.

But let me be clear: voting against leaving without a deal and for an extension does not solve the problems that we face. The EU will want to know what use we mean to make of such an extension, and this House will have to answer that question. Does it wish to revoke article 50? Does it want to hold a second referendum? Or does it want to leave with a deal, but not this deal? These are unenviable choices, but thanks to the decision that the House has made this evening, they are choices that must now be faced.

2.5 Commons votes to seek an Article 50 extension

After the Commons voted to reject leaving the EU without a deal on 13 March, the Commons voted on and agreed a Government motion on 14 March which provided that the Government would seek to agree an Article 50 extension with the EU. The Government also indicated that it would be holding a third 'meaningful vote' on the WA and PD by 20 March.

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 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](#).

In her [written statement](#) to the House of Commons on 15 March, the Prime Minister reiterated what was stated in the motion and said the Government would now seek to agree an extension with the EU. The statement said that it was expected that the EU will use the March European Council on the 21 and 22 March 2019 to consider and reach a decision on a UK request to extend the Article 50 period.

In response to an [urgent question](#) from Justine Greening MP in the House of Commons on 18 March 2019 on the procedure the Government would be following on Article 50 extension, Kwasi Kwarteng, Parliamentary Under-Secretary for Exiting the EU, said that the Government believed “it would be appropriate for the Prime Minister to write to the President of the European Council” and that:

It is highly likely and expected that the European Council will require a clear purpose for any extension, not least to determine its length. The European Council has to approve an extension by unanimity. With this in mind, we will look to request any extension in advance of the March European Council. It is the Government’s expectation that the European Council will decide whether to agree any UK request at this meeting.

In response to a follow-up question, Mr Kwarteng said:

We have made it very plain that if we are given the meaningful vote, we will seek a short extension, if we get that through the House, and if we do not, we will seek a longer extension.

Mr Kwarteng also said that if there was not a successful meaningful vote “we will probably ask for a long extension”. Asked how long this would be he said: “That would be a matter for the EU, and for our Government, to decide”.

Mr Kwarteng said that there would be a debate in the House of Commons on the statutory instrument to change the date of exit the following week and there would be “ample opportunity to discuss the purpose of any extension”. However, it was “not currently our intention to have indicative votes”.

2.6 Government requests 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, and that:

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 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 that in order for a further meaningful vote to be brought back to the House of Commons, the agreement would have to be “fundamentally different – not different in terms of wording, but different in terms of substance”.

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”.¹¹

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”.

2.7 Possible EU reaction to request for Article 50 extension

At the EU-Arab League summit in Sharm el-Sheikh on 25 February 2019, President of the European Council Donald Tusk said that an Article 50 extension would be a [rational solution](#):

For me, it’s absolutely clear that there is no majority in the House of Commons to approve a deal. We will face an alternative: a chaotic Brexit or extension. The less time there is until the 29th of March, the greater the likelihood of an extension and this is an objective fact — not our intention, not our plan — but an objective fact. I believe that in the situation we are in, an extension would be a rational solution. But Prime Minister May still believes that she is able to avoid this scenario.

The response from the EU27 to a request from the UK to extend Article 50 is likely to depend on the reasons the extension was being requested. On 7 March, France’s European Affairs Minister Nathalie Loiseau was [reported](#) as saying:

Why would there be an extension without a reason?. We have been in discussions for quite a long time now. There needs to be something specific to justify an extension. This is not only what Emmanuel Macron is saying, the German chancellor, Angela Merkel, was in Paris last week and said the same thing. And a number of my counterparts throughout the European Union call me for frequent

¹¹ 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.

discussions and we all have the same sense. A short extension: why not, if there is a good and credible reason.”

So far, we are still waiting for a proposal from London. It’s really a British initiative which has to come. And it has to be supported domestically in the UK.

A longer extension would cause complications as this may require the UK to participate in the European Parliament elections (see section 4). On 24 February, it was [reported](#) that some senior figures in the EU were mooting a longer extension of 21 months until the end of 2020 (corresponding to the period of transition provided for by the WA) to enable further discussions on the future UK-EU relationship which might identify future arrangements that could supersede the backstop¹².

On 26 February, *The Guardian* [reported](#) an EU source as saying that a three month Article 50 extension until 1 July without the UK taking-part in the European Parliament elections would be a “no return” situation. If “no solution” could be agreed enabling a withdrawal agreement to be approved by the House of Commons in this period then the UK would leave the EU without an agreement. *The Guardian* later [reported](#) on 28 February that senior EU sources had said that some Member States would insist on any Article 50 extension being a one-off with no additional opportunity to later request a further extension if an initial short extension proves insufficient to break the deadlock.

Following the Government’s defeat in the second ‘meaningful vote’ on 12 March, [statements](#) issued by spokespersons for both European Council President Donald Tusk and European Commission President Jean-Claude Juncker used the same wording:

On the EU side we have done all that is possible to reach an agreement. Given the additional assurances provided by the EU in December, January and yesterday, it is difficult to see what more we can do. If there is a solution to the current impasse it can only be found in London . . .

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.

The EU’s chief Brexit negotiator Michel Barnier [reportedly](#) told a meeting of MEPs on 13 March that there was currently no majority among the EU Member States on offering any extension at all, let alone on what conditions Brussels should attach.

¹² Although this was viewed as a plot to keep Britain in the EU by some Brexit supporters, in a [Conservative Home article](#) Martin Howe QC, Chair of the pro-Brexit Lawyers for Britain described the idea of a 21 month Article 50 extension as preferable to adoption of the WA. Mr Howe argued that this would give the UK more time to prepare for no deal while continuing to have representation in the EU institutions, whereas the transition period envisaged in the WA would see the UK continuing to be subject to EU rules without representation and would then lead to the UK being locked in the backstop and involve a continuing role for the CJEU and continuing payments to the EU even after 2020.

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On 14 March, prior to the debate in the House of Commons on extending Article 50, Mr Tusk [tweeted](#):

During my consultations ahead of [the European Council], I will appeal to the EU27 to be open to a long extension if the UK finds it necessary to rethink its Brexit strategy and build consensus around it.

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 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”. If a short extension is initially agreed, no further extension would be possible beyond the date of the EP 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 document stated that that the EU Treaty does not foresee an Article 50 extension being made “subject to special conditions expressly put on the withdrawing state” and that there is “no legal limitation to the reasons why an extension is decided”. In addition, it notes that Article 50 TEU makes no mention of the possible duration of the extension, but that a fixed date is implied in order to give legal certainty about when the withdrawal can be expected to occur. It states that the time-limited character of the exercise “is of the essence of the withdrawal procedure”. 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 “such extension must respect the principle of proportionality between its duration and the purpose it is intended to serve”.

The document also states 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 notes 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”.

[A European Commission document](#) circulated on 20 March however states that a short extension should be limited until the 23 May without UK participation in the EP election. It states that for a longer extension beyond this date, the UK would be obliged to hold EP elections. It states that an extension beyond 23 May without UK participation in the election would create legal uncertainty and warns 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 Parliament seats having been reallocated. The Commission warns 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.

Under EU legislation that is due to take effect when the UK leaves the EU, some of the UK's EP seats will be reallocated to 14 other Member States (with 46 of the 73 UK seats set aside for future EU enlargements). The Commission warns that:

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.

The document also advised that “under all circumstances”, regardless of whether a short or longer extension was agreed that:

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.

It was reported on 18 March that EU sources had indicated that the European Council on 21-22 March would agree ‘[political conclusions](#)’ on the UK request for an Article 50 extension, but that a formal legal decision could be taken the following week by [written procedures](#). This would allow the decision to take into account any changed circumstances in the UK.

In a [statement](#) following the General Affairs Council on 19 March, Mr Barnier repeated the view that if the UK asks for an extension, the EU will need to know its reasons. He said:

If Prime Minister May requests such an extension before the European Council on Thursday, it will be for the 27 Leaders to assess the reason and the usefulness for an extension.

EU Leaders will need a concrete plan from the UK in order to be able to make an informed decision.

And key questions will be:

- Does an extension increase the chances for the ratification of the Withdrawal Agreement?
- Will the UK request an extension because it wants a bit more time to rework the Political Declaration?

Mr Barnier said that the PD could be made more ambitious in the coming days if a majority in the House of Commons so wishes.

If not, what would be the purpose and the outcome of an extension?

And how can we ensure that, at the end of a possible extension, we are not back in the same situation as today?

In any case, the European Council will need to assess what is in the best interest of the EU.

Extending the uncertainty without a clear plan would add to the economic cost for our businesses but could also incur a political cost for the EU.

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It is for the British Government and Parliament to decide very quickly what the UK wants to do next.

Speaking to reporters after the meeting, Mr Barnier 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.

In his briefing to the General Affairs Council, Mr Barnier [reportedly](#) mentioned a general election or second referendum as possible reasons for a long delay.

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 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.

A spokesperson for Commission President Juncker said that [Mr Juncker had spoken to Mrs May](#) on the phone regarding her letter and said that President Juncker had “clearly warned the prime minister against including a date for the extension that will be after the European parliament elections” and that “the withdrawal has to be complete before May 23, otherwise we risk facing institutional difficulties and legal uncertainty, given the European elections date”.

European Commission

In an interview with the *Luxembourg Times* on 23 January 2019, Mr Barnier [said](#):

If Britain asks for an extension, it has to be approved by EU leaders. They will only agree if three questions are answered: first and second, why and how long? And third, will not that be a problem for holding the EU elections in May? I have no clear legal answer to the

third question yet. It is important that the EU's democratic processes are not disturbed by this, however.

The first two questions are complex and interconnected: it needs a stable majority in London for all laws related to Brexit that need to be adopted. This will need time.

The EU's deputy chief Brexit negotiator Sabine Weyand [said](#) at the end of January that the EU's heads of state and government would need information on "the purpose of an extension" and that "The idea of going into serial extensions really isn't very popular in the EU27".

On 7 February the German finance commissioner, Günther Hermann Oettinger, [said](#):

If the British side asks for an extension of two or three months and there are reasons for that, I think there's a good chance that the member states would accept that unanimously," he said. "But in the eight or 12 weeks there needs to be the possibility of achieving progress and that there must be a withdrawal agreement at the end of that.

In an interview with *Stuttgarter Zeitung* on 18 February 2019, European Commission President Jean-Claude Juncker said that the [EU would not oppose an extension](#) of Article 50 if requested by the UK. He said:

Any decision to ask for more time lies with the UK. If such a request were to be made, no one in Europe would oppose it.

Mr Juncker also suggested that he had no specific timeframe in mind for extending the Article 50 period:

If you are asking for how long the withdrawal can be postponed, I have no timeframe in mind. With Brexit so many timetables have already gone by the wayside.

He indicated that this could involve UK participation in the European Parliament elections at the end of May, saying:

That to my mind would be an irony of history. Yet I cannot rule it out.

On 19 February 2019, at a 'UK in a Changing Europe' event in London, Stefaan De Rynck, adviser to the EU's chief Brexit negotiator Michel Barnier, said that the EU27 had not had "a collective discussion" regarding [reaction to a possible UK Article 50 extension request](#). He said that:

first of all of course the UK would have to request. If there is a request we would have to look at this, and we would gladly look at this. The question will be what purpose does it serve, and in function of the purpose, what duration does it have . . . it's really a decision for the 27 to take unanimously if the UK requests it . . . this will be an eminently political discussion between 27 leaders.

In an interview with the German newspaper *Die Welt* published on 1 March, Mr Barnier said that EU Member States would be [open to an extension of Article 50](#) but that the aim "mustn't be to postpone solving the problem but to solve it". Mr Barnier said that if the UK requested an extension after 14 March, then this would be decided upon at the next European Council meeting on 21 March.

In a [speech to the European Parliament](#) on 13 March, the day after the Government's defeat in the second 'meaningful vote', Mr Barnier said:

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Why would we extend these discussions? The discussion on Article 50 is done and dusted. We have the withdrawal agreement. It is there.

President Juncker also said that there will be no further interpretations, no further assurances - we cannot go any further.

Mr Barnier said that after the Commons' votes on 13 and 14 March it would "be up to the United Kingdom government to tell us how to proceed, we hope in a positive way so they can eventually have a constructive majority on a proposal". He added:

What will their choices be? What will the clear line be that they take. That is the clear question we need an answer to now. That is the question that has to be answered before a decision on a possible further extension.

Buzzfeed [reported](#) on 13 March that a European Commission memo used to brief European ambassadors that day had set out its thinking on a possible Article 50 extension. It said that an extension would only make sense in three circumstances: to prepare for no deal; for the UK to hold a general election; or to stage another referendum. In the latter two scenarios it said that a short extension would be insufficient and that a longer extension involving UK participation in the European Parliament elections would be required.

France

On 16 January, the *Financial Times* [reported](#) that France's European Affairs Minister Nathalie Loiseau had indicated in a radio interview that an extension of Article 50 would not be possible to negotiate changes to the principles of the Northern Ireland/Ireland backstop. In the interview she said:

The first question is delay to do what? . . . If it is to tell us that the solution envisaged for Ireland [the backstop] is an expiry date, we have already said that it is not possible. We need an assurance that the Irish solution is solid.

On 19 February, Ms Loiseau was reported as saying that "a delay for some days for [technical reasons](#)" would be supported. But said:

if it's for political reasons there has to be a real advance on something that is supported by a majority in the British parliament which corresponds to our red lines, our negotiating directives.

If we have to talk about a reformulation of our future relationship it's entirely possible to do that. If it's about reopening the withdrawal agreement we have all already said that this point is not negotiable.

At a joint press conference on 27 February with German Chancellor Angela Merkel, French President Emmanuel Macron President Macron said that the time had come for the UK "to make choices" and that the UK would need to have a [clear reason for an extension](#):

We could examine a request for an extension, if it is justified by new choices by the British. But under no circumstances would we accept an extension without a clear perspective.

On 19 March, Ms Loiseau [told reporters](#) that:

It's not a question of really strict conditions. We need something new [from the UK] because, if it's an extension to remain in the same deadlock, how do we get out of this? The Brits have to come with an initiative [that is] clear, credible and supported by a majority.

It's a choice to be made by the UK. They've said no to a no deal and no to a realistic deal. They have to change their minds on one of the two options. If there's no decision, and the 29th comes, then it's no deal. If Britain decides on nothing then it chooses no deal.

On the same day an official working for the French President was [reported](#) as saying:

Playing for time just for the sake of playing for time would not constitute a project or strategy. Now is not the time for procrastinating.

The official was reported as saying that the UK had to give clarity on the way forward:

An extension is merely an instrument, it's not a solution or a strategy in itself ... Now is not the time for pondering or looking at perspectives on Brexit

The official also stressed the importance of protecting "the functioning of the EU". If a longer extension were to be granted, for example 12 months, the implications would need to be examined in terms of how a Member State planning to leave would have a seat and a say in key future decisions.

On 20 March, the French Foreign Minister Jean-Yves Le Drian told the French parliament that France was willing to block an extension if the WA was not approved by the House of Commons. He [said](#) France would only be open to a "technical" extension of a few weeks to allow formal ratification of the WA but that without a Commons vote to approve the deal, "the central scenario is a no-deal exit". He also [said](#) that if Mrs May could not present "sufficient guarantees of the credibility of her strategy" that would lead to the extension being refused and a no-deal exit.

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

Prime Minister Theresa May has asked, in the case of a positive vote in the British parliament, for a purely technical extension.

I am quite open to a technical extension - it should be as short as possible - in the case of a positive vote.

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. We all know that.

It is absolutely essential to be clear in these days and these moments, because it is a matter of the good functioning of the EU. We cannot have what I would call an excessive extension which would harm our capacity to decision and to act.

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

Germany

Germany's Economic Affairs Minister Peter Altmaier [said](#) on the BBC Today programme on 16 January:

When parliament needs more time, then this is something that certainly will have to be considered by the European Council. Personally, I would see this as a reasonable request.

On 19 February, Germany's Minister for Europe Michael Roth [said](#):

An extension would only make sense if we have new substantial ideas on the table. Otherwise there's no point. And of course we would look at such a suggestion closely should the British in fact decide to ask for an extension.

But this is solely the responsibility of the British, we can't make such a suggestion. And then we have to unanimously vote on it. In the end the deadlines are very clear: if there is a substantial extension, for example past the 1 July, then of course there will also have to be [European Parliament] elections in Great Britain, but I don't want to speculate about this.

At the joint press conference with President Macron on 27 February, Chancellor Merkel indicated a [less conditional approach](#) to a possible Article 50 extension. She said:

If Great Britain needs more time we will not oppose it but of course we are seeking an orderly exit. We regret this step, but it is reality and we now have to find a good solution.

It was later [reported](#) in *The Guardian* that Ms Merkel had said at the Sharm el-Sheikh summit on 25 February that an extension until the European Parliament elections on the 23 May would be "very easy" and a longer delay until 30 June, before the new Parliament convenes would be "easy".

Arriving at the EU General Affairs Council meeting on 19 March, Mr Roth [said to reporters](#):

The clock is ticking and time is running out.

[We are] really exhausted by these negotiations. And I expect clear and precise proposals [from] the British government why such an extension is necessary.

It is not just a game. It is an extremely serious situation, not just for the people in the United Kingdom, but for the people in the European Union.

For my government, the key priority is to prevent a no-deal Brexit ...

I don't have any appetite for substance-less, very abstract discussions and negotiations on the Brexit. Please deliver, dear friends in London, please deliver. The clock is ticking.

Also on 19 March, Ms Merkel [said](#):

I will fight until the final hour of the deadline of March 29 that we have an orderly exit.

We don't have a lot of time for that, but a few days, and I can't foresee how I'll be placed on Thursday [the European Council of 21 March] – that will all depend on what Theresa May puts forward,

what the situation is, what happens in parliament, and then we the 27 will respond adequately and jointly.

On 20 March, following Mrs May's letter to Donald Tusk seeking an Article 50 extension, Germany's foreign minister Heiko Maas [tweeted](#):

The letter from Theresa May has not solved any problem yet. If the European council is to decide on an extension of the deadline for Britain, we would like to know what is the concrete purpose.

On 21 March, prior to the European Council meeting, Ms Merkel [told](#) the German parliament

[There was a request from Theresa May] to delay the exit date to June 30. The leaders of the EU27 will intensively discuss this request. In principle, we can meet this request if we have a positive vote in the British parliament next week about the exit document.

With regard to the date of June 30, we have to take into consideration that we have European elections in May. This means the future and legality of the European election must be respected. But we can surely talk positively about a short extension.

Ireland

The Independent [reported](#) on 8 January 2019 that Ireland's foreign minister Simon Coveney had said:

If it is the case that in some point in the future the British government seeks an extension of Article 50, that will have to have EU approval, but that is not something we would stand in the way of.

On 25 February, Irish Prime Minister Leo Varadkar said that a long extension of Article 50 would be [preferable to a no deal Brexit](#). He said:

I'd certainly rather see an extension than seeing the UK leave without a deal. A long extension creates a complication in relation to the European elections, but that's a small complication relative to the impact on our economy.

On 11 March Mr Varadkar said that an Article 50 extension needed to be for a [specific purpose](#):

If there is going to be an extension, it has to be an extension with a purpose.

Nobody across the European Union wants to see a rolling cliff edge where tough decisions just get put off until the end of April, then to the end of May and then maybe till the end of July.

On 14 March, prior to the Commons debate on extending Article 50, Mr Coveney [said](#):

If you have a long extension of article 50, that opens up the debate in a much broader way to the overall approach that the United Kingdom takes to Brexit. That may facilitate a fundamental rethink, it may not, we just don't know.

If you have a long extension of, say 21 months to the end of 2020 – whatever the period would be – then Britain has a legal entitlement to have representation in the European parliament.

On 15 March, Ireland's Finance Minister Paschal Donohoe said that [Ireland would respond "very generously"](#) to a request from Britain to delay its exit

from the European Union. He also cited the need for financial and economic stability in considering an Article 50 extension:

Clearly given all that we have all gone through in watching the British political system grapple with the complexity of Brexit, there are many in the European Union that would want to be very clear on how this extension period will be used . . .

I believe that it is highly important that we do all we can to avoid being in this scenario of rolling cliff edges

What we have said is that obviously the British government will need to decide, if they do want an extension, how long they will want it for, and we will be positive and constructive in relation to that, when they put it forward.

On 19 March, speaking following the General Affairs Council in Brussels, Mr Coveney [told](#) reporters that that the EU would not automatically agree an Article 50 extension and that EU leaders would be looking for a new plan of action from the UK. He said:

I don't think there's any appetite among EU leaders to simply kick this can down the road.

I think that people would be very foolish to think that this is just some kind of political game, and that an extension will automatically be facilitated.

I think that EU leaders will be demanding, and understandably so, and want to know if there is an extension to article 50 that that time will be used to implement a new plan of action , potentially a new approach, that can help the British parliament to get beyond the impasse that is currently preventing agreement.

On 20 March, following Mrs May's letter to President Tusk seeking an Article 50 extension Mr Varadkar said it was time to "[cut the British Government some slack](#)". Mr Varadkar said:

There's a lot of political instability in London at the moment, as people can see. And there is a real risk, that we wish to avoid, of no-deal happening by accident, despite people's best intentions.

So I think it's time now to cut them some slack - to cut the British government some slack when it comes to their request for an extension and when it comes to their request that the Strasbourg agreement be ratified formally by the European Council over the next two days.

So we're willing to support both of those requests, but obviously we're not entertaining any change to the withdrawal agreement or the backstop.

Mr Varadkar said he did not have "a definitive view on how long the extension should be" and referred to the complications of a long extension, especially with regard to the EP elections at the end of May. He later added that the extension "has to be for the purpose of securing a deal not deferring decisions too far into the future". Mr Varadkar said:

We would prefer to see this resolved sooner rather than later. I think it will be important for EU heads of state and government to hear from Mrs May tomorrow, to hear what her plan is.

Asked about European Council President Tusk's statement that the UK should only have an extension if the British parliament votes to ratify the treaty the following week, Mr Varadkar said:

There are some people who would take a much more hardline view that we shouldn't agree to an extension and there are others who would take a view that an extension should be granted unconditionally.

The view I'm taking and the view of the Irish Government is taking is that we want to avoid no-deal on March 29th. We believe that is what everyone in Europe and certainly the UK wants as well and in that context we're willing to cut the British Government some slack in terms of their request for an extension.

But when it comes to the Withdrawal Agreement, the Irish protocol and the backstop, those cannot be changed.

Mr Varadkar acknowledged frustration in the EU at the monopolisation of the agenda by Brexit, but said: "That frustration can't allow us to end up in a no-deal scenario by accident."

On 21 March, prior to the European Council, Mr 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.

Brexit was never going to be clean. Brexit would always require some very hard choices for the United Kingdom to make. It was never going to be all good and no bad. And those decisions now need to be made.

Regarding the possibility of a long extension, Mr Varadkar said: "There hasn't been a request for a long extension so I don't think we can consider that at this stage".

Mr Varadkar also said that no deal "can only ever be a British choice" and that it's "always up to them, even at the last moment, to revoke article 50 unilaterally". He added:

They do not need permission to do that so no-deal, if it happens, will be a British choice and a British decision.

Spain

On 27 February, the Spanish Prime Minister [Pedro Sánchez suggested](#) that it would not be desirable to extend Article 50 without a clear objective.

Speaking to the Spanish Parliament, Mr Sánchez said:

I want to make clear before this possible position of the British government, that although Spain is not going to oppose the concession of an eventual extension, it must have a certain perspective of resolution. Prolonging uncertainty by postponing deadlines is not a reasonable nor desirable alternative.

Mr Sánchez also indicated that an extended Article 50 period could not be used to undermine the principles of the backstop:

The position of Spain, as I have conveyed to Prime Minister Theresa May in different telephone conversations, is the same: it is not possible to temporarily limit the backstop or to allow a unilateral exit from it.

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Due to its nature as a security mechanism, it is not possible to set a term for it. It is not only a matter of solidarity with one of our partners, Ireland, but also of preserving the peace that was achieved in Northern Ireland decades ago.

Italy

On 14 March, Italian Foreign Minister Enzo Moavero Milanesi [told the Italian parliament](#) that he was in favour of granting an Article 50 extension but that it would need to be discussed in Government. He said:

We have to talk about it at the government level . . .

I personally think that, if there were a request for a delay by the United Kingdom... we should say yes . . .

No postponement would mean immediately going into a no-deal scenario, which, unfortunately, is on the table . . .

Arriving at the European Council on 21 March, Italian Prime Minister Giuseppe Conte [said](#):

The Italian position is that to agree a short term delay could be useful, but we will have to wait for the umpteenth vote of the British parliament. We are always for a deal, we do not welcome the prospect of a no deal but it is not our decision.

Netherlands

Speaking from the Sharm el-Sheikh summit on 25 February, Dutch Prime Minister Mark Rutte said the UK would need to [set out the purpose](#) of an Article 50 extension:

It's up to UK. If UK ask for delay, the EU will ask what do you want with it? We don't want to go round in circles for the next couple of months. What will be achieved by it?

Following the Government's defeat in the second 'meaningful vote' on 12 March, Mr Rutte [tweeted](#):

I regret the outcome of tonight's [#Brexitvote](#). It is disappointing that the UK government has been unable to ensure a majority for the Withdrawal Agreement agreed by both parties in November, even after multiple additional assurances from the EU. A solution must come from London.

The EU continues to stand by the Withdrawal Agreement, including the backstop, which serves to prevent a hard border in Ireland and preserve the integrity of the single market unless and until alternative arrangements can be found.

Should the UK hand in a reasoned request for an extension, I expect a credible and convincing justification. The [#EU27](#) will consider the request and decide by unanimity. The smooth functioning of the EU institutions needs to be ensured.

Following the Commons vote to seek an Article 50 extension on 14 March, [Mr Rutte said](#):

You will get a situation in which we continue to talk for months, as we have been doing for months. What good is it to continue whining at each other for months, while you've been spinning in that circle for two years. . .

They have decided to leave. If they want to postpone, they must also say why.

Arriving at the European Council on 21 March, Mr Rutte said an [extension would be conditional](#) on the House of Commons approving the WA.

The ball has to be in the court of the British Parliament. They first have to say 'yes'.

I think the signal today might be that if the British parliament would say a 'yes' lock, stock and barrel to everything on the table, then Europe understands that technically that you need time to implement everything in law.

Romania

On 27 February, George Ciamba, Minister for European Affairs for Romania (holding the EU Council Presidency), said that the EU was [ready to respond](#) to any UK request for an extension to the Brexit timetable, and that problems such as the European Parliament elections could be overcome if there is the political will.

Speaking from the EU General Affairs Council in Brussels on 19 March (which he was chairing), Mr Ciamba [said](#):

We were saying all the time that we need to have more clarity from London. Clearly, there is no clarity. There is less clarity today than ... yesterday.

We are still looking forward to the European council and to see what is going to be the political will from London. At the end of the day, be it the speaker of the house, be it the prime minister, be it the members of parliament, I think it's about the political will and about a little bit more clarity what Europe could do, because we know very well what Europe cannot do.

Austria

Austrian foreign minister Karin Kneissl said on the [Marr programme](#) on 10 February 2019 that:

all the 27 will have to decide in a unanimous way to say yes, let us extend, but we have to know for what kind of purpose, we have to know the substance of the proposal made by the British Government and this is a unanimous decision to be taken by the 27 of us.

At a [joint press conference](#) with Michel Barnier on 28 February, Austrian Chancellor Sebastian Kurz also talked about the need for an Article 50 extension to have an objective. He said:

If this extension should take place it is also necessary to ask the question: what is the goal for the time frame, what good does this extension do? Does it ensure that we will be able to finish all the work? But if this is the way out to prevent a hard Brexit then we will support this path.

On 15 March, Ms Kneissl said that Austria [would be in favour](#) of granting Britain a "short extension". She told BBC Politics Live that it remained to be seen whether other EU states would also agree and that it would be very difficult to say whether a longer extension would be granted. She said:

A longer extension of course coincides with the European Parliamentary elections and this cause a problem . . .

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It's not just an issue of the British participating in elections. It's about the presidency of the parliament and we could enter into a debate about parliamentary legitimacy and we could enter into a debate about parliamentary legitimacy.

On 18 March, speaking from the Foreign Affairs Council meeting in Brussels, Ms Kneissl [pointed to the risks](#) of a chaotic Brexit extension. She said that if the EU granted the UK an extension for one year without requiring UK participation in the EP elections that the EU would "end up in a big dilemma, a real quagmire in terms of democratic legitimacy".

Portugal

On 31 January, Portugal's foreign minister, Augusto Santos Silva indicated support for an extension of Article 50 to prolong discussions around alternatives to the backstop. He [said](#):

We have negotiated an agreement and the British parliament now says: we do not like this backstop clause, we have a better one. . . . What we are saying is: show us a better one. Still more preferable would be to prolong, to delay the moment of departure, to have time to rationally revisit all this.

A Portuguese Foreign Ministry [statement](#) on 14 March said:

Allowing an extension by just some weeks we would create an illusion that the current problem is of a technical nature, when what we've got is a political issue.

Sweden

In an [interview](#) published on 18 March 2019, Sweden's EU Affairs Minister Hans Dahlgren, said:

If there is a well argued reason that the UK presents, then I don't think anyone really wants to resist such a request.

The decision needs to be taken by the European Council unanimously, but I think as Donald Tusk said, we should be open for a longer extension if there is an argued reason for doing so. And if they want to remain in the European Union for a longer period they also have to elect members of the European Parliament, so this must be part of the whole plan, because the elections are in May.

But just to have the process going on and on and on without any plan for what the options on the table would be, that's not very attractive.

Arriving at the European Council meeting on 21 March, Swedish Prime Minister Stefan Lofven said that a short Article 50 extension [would depend on the WA being approved](#) by the House of Commons. He said:

An extension would also depend upon the voting in the House of Commons because we believe it is very important that the House of Commons actually agrees upon the agreement that we have and then we can talk extension.

Belgium

On 18 March Belgium's foreign minister, Didier Reynders, [told reporters](#) at the Foreign Affairs Council meeting that the EU was awaiting a clear signal from London and that:

We are not against an extension in Belgium, but the problem is to do what?

Of course, if it is possible to avoid a no-deal situation it would be better. We are sure that a no-deal would be a lose-lose situation for both sides, but we are prepared.

Luxembourg

On 15 March 2019 Luxembourg's Prime Minister Xavier Bettel [tweeted](#):

Keep calm and drink tea" is not an option for #Brexit and the following days. We need a very clear and comprehensive reason for a delay extending Article 50.

Arriving at the European Council meeting on 21 March, Mr Bettel [said](#):

If next week we are not able to find agreement in the House of Commons we are going in the direction of no deal.

Lithuania

At the World Economic Forum at Davos on 24 January 2019, Lithuanian President Dalia Grybauskaitė [told Euronews](#) that a no deal Brexit would be preferable to Article 50 extension. She said:

The more we will be trying to extend any kind of uncertainty, the worse it will be for both sides. And in that case, even it's better to finish this chaos sooner even with no deal or with any kind of deal

Arriving at the European Council meeting on 21 March, President Grybauskaite said [EU leaders would be "supportive"](#) of Mrs May but this would be conditional. She said:

We have European elections and that means probably conditionality will be an extension only [to] May or a longer extension. In that case the UK will need to organise an election ...

We are still optimistic. We need to support the UK. The UK for us is important and we are hoping for a solution, but the timing is still in the hands of the UK parliament.

Estonia

The Estonian foreign minister Sven Mikser [told reporters](#) at the Foreign Affairs Council on 18 March that the EU was ready to consider an extension, but that the decision would depend very much on UK politics. He said: "The ball at the moment is firmly in the UK side of the court."

Latvia

Arriving at the European Council on 21 March, Latvian Prime Minister Krisjanis Karins said the UK would have to [leave the EU without a deal](#) or revoke Article 50 if the WA is rejected again by the House of Commons. He said.

If the UK is leaving we would want that to be an orderly process so there has been a withdrawal agreement agreed over a two-year period - I don't see any chance of changing that.

So the question is will the UK accept this agreement and then it will be an orderly withdrawal? No-one wants a chaotic withdrawal.

Asked what would happen if the WA is rejected again Mr Karins replied:

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There are then two alternatives: either Great Britain withdraws article 50 and stays in the European Union or there is a disorderly withdrawal.

3. Scenarios in which an Article 50 extension could be requested

There are a number of different scenarios in which an Article 50 extension could be requested by the UK and approved by the EU. The EU is likely to be willing to approve a short extension of Article 50 if there is a clear purpose for it.

The EU is likely to be more reticent about an extension of Article 50 beyond the European Parliament elections scheduled for 23-26 May 2019, and particularly so for an extension that goes beyond 2 July 2019 when the newly elected Parliament sits for the first time (see section 4)

EU leaders are unlikely to favour an extension of Article 50 to continue negotiations with the UK unless there is a change of UK Government position in relation to the future UK-EU relationship (or the possibility of such a change). However, they would most likely agree to extend Article 50 if the WA has been approved and more time is needed for the UK Parliament to pass the necessary legislation required to implement the WA in domestic law.

In its response to the House of Commons vote on the WA and PD published on 28 January 2019, the Commons Select Committee on Exiting the EU concluded:

There have been indications that the EU27 would look favourably on a request for an extension if it was to allow time for the ratification process to be completed, for a second referendum, or for a general election. The EU27 appear unlikely to look favourably on a request for an extension to allow more time for negotiations, although it has been suggested that there would be a greater chance of allowing some further negotiations on the Political Declaration. If the EU were to agree an extension, it is likely to be time limited rather than open ended.¹³

3.1 Extension to continue negotiations

EU leaders have repeatedly affirmed that they would be unwilling to re-open negotiations on the WA. An extension of Article 50 for this purpose would therefore be unlikely. The EU may however be more willing to extend Article 50 to enable further discussions on the future UK-EU relationship and to make changes to the Political Declaration setting out the framework for the future relationship between the UK and the EU.

On 29 November 2018, the EU's chief Brexit negotiator Michel Barnier [told](#) the European Parliament: "Given the difficult circumstances of this negotiation and given the extreme complexity of all the issues of the British withdrawal, the treaty that is on the table is the only deal possible".

¹³ House of Commons Exiting the EU Select Committee, [Response to the vote on the Withdrawal Agreement and Political Declaration: Assessing the Options](#), 28 January 2019.

The Conclusions of the meeting of the EU27 leaders at the European Council on 13 December 2018¹⁴ stated with regard to the WA: “The Union stands by this agreement and intends to proceed with its ratification. It is not open for renegotiation”.

In a speech to the European Parliament on 16 January 2019 (following the House of Commons’ rejection of the WA), 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”.¹⁵

Following the approval by the House of Commons of the Brady amendment on 29 January, which indicated that the support of the House for the WA would be contingent upon “replacing” the Northern Ireland/Ireland backstop with “alternative arrangements”, the Prime Minister said she would seek to obtain “legally binding changes” to the WA dealing with concerns on the backstop. The President of the European Council Donald Tusk [responded](#) the following day that:

The EU position is clear and consistent. The Withdrawal Agreement is not open for renegotiation. Yesterday, we found out what the UK doesn't want. But we still don't know what the UK does want.

Following their meeting on 7 February 2019, Theresa May and the President of the European Commission Jean-Claude Juncker issued a [joint statement](#). The statement said that President Juncker had underlined that the EU27 would not reopen the WA, but had “however expressed his openness to add wording to the political declaration agreed by the EU27 and the UK in order to be more ambitious in terms of content and speed when it comes to the future relationship between the European Union and the UK”.

Following the agreement of new supplementary texts by the UK and EU on 11 March providing assurances regarding the EU’s commitment to negotiate a future agreement to replace the backstop arrangements and clarification on arbitration mechanisms in the WA, Mr 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 – if the meaningful vote tomorrow fails.

There have been calls from MPs from across the House of Commons for indicative votes to be held in order to test whether there is a majority in the House for a particular course of action in the Brexit process and on

¹⁴ This European Council was held to discuss Brexit developments under the Article 50 format whereby the withdrawing state (i.e. the UK) is not included.

¹⁵ Michel Barnier, [speech to EP](#), 16 January 2019. Opening statements available at https://multimedia.europarl.europa.eu/en/opening-statements_I166570_03-V_rv.

negotiating (or not) a future relationship with the EU. This would most likely require changes to the Political Declaration. The House of Commons Committee on Exiting the EU, in a report published on 16 January 2019, recommended that a series of indicative votes be held on options for proceeding with withdrawal and negotiating a new relationship framework with the EU.¹⁶ The Committee's [report](#) on 28 January referred back to this recommendation and stated:

The House could decide that the Political Declaration, which offers no certainty on the UK's end state relationship with the EU, should be amended to provide clarity on a shared understanding between the UK and the EU about a mutually agreeable end state. This would require re-negotiation which would, most likely, require a limited extension of the Article 50 process. We would expect that, within reason, the EU would accede to any such limited request, although such a decision does require the unanimity of the 27. The pronouncements of the EU indicate that any request to re-open negotiations on the legally binding Withdrawal Agreement would not receive a positive response

Among the [amendments](#) voted upon in relation to the Government motion on the Brexit process on 29 January 2019 was one from Dominic Grieve MP to set aside specific days in the House of Commons to debate different options on Brexit and the future relationship with the EU¹⁷. This was envisaged as a way of reaching a consensus in Parliament on the way forward and possibly enable a revised agreement with the EU. This amendment was defeated by 321 votes to 301.

Labour party leader Jeremy Corbyn [wrote](#) to the Prime Minister on 6 February indicating that Labour could support the WA provided that a number of changes were made to the PD involving a permanent and comprehensive UK-wide customs union; close alignment with the EU Single Market, underpinned by shared institutions and obligations; and dynamic alignment on rights and protections. In his meeting with Theresa May on 7 February, European Council President Donald Tusk [reportedly](#) told the Prime Minister that Mr Corbyn's plan offered a "promising way out" of the present Brexit impasse. However, the Prime Minister's [response](#) to Mr Corbyn on 10 February stressed the importance of the UK having an independent trade policy (thus ruling out a customs union) and rejected the idea of automatically following changes of EU rules on workers' rights or environmental protection. Mr Corbyn [met with Labour and Conservative MPs](#) advocating a 'Norway plus' model¹⁸ on 6 March to discuss proposals.

The possibility of holding indicative votes in the House of Commons on the future relationship with the EU was [revived](#) following the Government's second 'meaningful vote' defeat on 12 March. The House of Commons Exiting the EU Committee response to the vote published on 13 March reiterated its previous recommendation that the House of Commons be

¹⁶ House of Commons Exiting the EU Committee, [Response to the vote on the Withdrawal Agreement and Political Declaration: Options for Parliament](#), 16 January 2019

¹⁷ For an outline of different options for the future relationship being proposed, see House of Commons Library Briefing Paper CBP8483, [Brexit: Proposals for the future UK-EU relationship](#), 25 January 2019.

¹⁸ For further discussion of the 'Norway plus' model see House of Commons Briefing Paper CBP8483 [Brexit: Proposals for the future UK-EU relationship](#), 25 January 2019.

given an opportunity to identify what new approach might secure a majority in the House of Commons through the holding of a series of indicative votes.¹⁹

An [amendment](#) to the Government's motion was tabled by the Chair of the Exiting the EU Committee Hilary Benn with the support of a cross-party group of MPs including Yvette Cooper and Dominic Grieve, seeking to set aside Parliamentary time on 20 March to hold indicative votes on the way forward. This was defeated by 314 votes to 312.

Opening the debate for the Government, Cabinet Office Minister David Lidington said that if the WA and PD had not been approved by 20 March, then there would be the "[prospect of choosing only a long extension](#)" and that the Government would then "facilitate a process in the two weeks after the March European Council to allow the House to seek a majority on the way forward". However, should this scenario occur "we will be required, as a condition, to hold European parliamentary elections in May". Closing the debate for the Government, Brexit Secretary Stephen Barclay said the Government would put an amendable motion to the House no later than 25 March.

In response to an [urgent question](#) on Article 50 extension on 18 March, Kwasi Kwarteng, Parliamentary Under-Secretary for Exiting the EU, said it was "not currently" the Government's intention to have indicative votes.

3.2 Extension to pass legislation to implement WA

[Section 13\(1\)](#) of the *European Union (Withdrawal) Act 2018* provides that as well as a vote by the House of Commons on a motion approving both the negotiated withdrawal agreement and the framework for the future relationship (the 'meaningful vote'), domestic ratification of the WA also requires that Parliament passes legislation providing for domestic implementation of agreement.

The planned EU (Withdrawal Agreement) Bill will provide for the implementation of the WA. This legislation must be in place by the date of the UK's exit from the EU. Without the means to implement the WA (which this legislation will provide), the UK will be in breach of its obligations under the WA.

The Government's White Paper, *Legislating for the Withdrawal Agreement between the United Kingdom and European Union*, published in July 2018 explains that the EU (Withdrawal Agreement) Bill will:

be the primary means by which the rights of EU citizens will be protected in UK law;

legislate for the time-limited implementation period; and

¹⁹ House of Commons Exiting the EU Committee, [Response to the 12 March 2019 vote on the Withdrawal Agreement and Political Declaration: next steps for Parliament](#), 13 March 2019

create a financial authority to manage the specific payments to be made under the financial settlement, with appropriate Parliamentary oversight²⁰

The Bill will also provide for the implementation in domestic law of the WA Northern Ireland/Ireland backstop provisions. Michel Barnier, [giving evidence to the Exiting the EU Committee](#) on 3 September 2018, said that the WA needed to contain “an operational backstop in legal terms”, suggesting that primary legislation may be required in respect of arrangements agreed to in respect of Northern Ireland.²¹

As noted above, Foreign Secretary Jeremy Hunt [indicated](#) on 31 January 2019 that an extension of Article 50 could be requested if the WA is approved shortly before 29 March, in order to provide for extra Parliamentary time to pass legislation to prepare for Brexit.

3.3 Extension to prepare for no deal

A report by the Institute for Government²² published on 31 January 2019 said it was increasingly unlikely that the Prime Minister will be able to get the six outstanding Brexit bills through Parliament in time if there is a no-deal Brexit on 29 March. These are the Trade Bill, Agriculture Bill, Fisheries Bill, Immigration Bill, Healthcare (International Agreements) Bill and the Financial Services Bill.

In addition, the Institute for Government said that only around 100 of the estimated 600 statutory instruments required to prepare the statute book for exit day had completed their passage through Parliament. Only around half had begun their passage through Parliament with around 250 still to be introduced.

As of 12 March 2019, 483 statutory instruments had been laid, and 247 had completed their passage through Parliament. These are being laid primarily using powers in the *EU (Withdrawal) Act 2018*.²³

Extension of Article 50 would also enable the Government to implement other arrangements needed to prepare for a no-deal scenario. The response of the EU to a request by the UK to extend Article 50 simply for the purposes of implementing ‘no deal’ are uncertain. EU leaders might also welcome more time to implement their own no-deal planning but, if granted, an extension of Article 50 for this purpose would most likely be for a short period.²⁴

²⁰ Department for Exiting the EU, [Legislating for the Withdrawal Agreement between the United Kingdom and European Union](#), Cm 9674, July 2018. See also section 10.3 of House of Commons Library Briefing Paper CBP8453, [The UK’s EU Withdrawal Agreement](#).

²¹ [Oral evidence to the Committee for Exiting the European Union](#), HC372, 3 September 2018, Q2537.

²² Institute for Government, [Brexit: two months to go](#), 31 January 2019.

²³ See the Hansard Society’s Brexit Statutory Instruments [Dashboard](#). See also Joel Blackwell and Ruth Fox, [Legislating for Brexit: can the government get all the Statutory Instruments it needs through parliament by 29th March?](#), Prospect, 8 February 2019.

²⁴ See House of Commons Library Briefing CBP8397, [What if there’s no Brexit deal?](#), updated 8 February 2019.

3.4 Extension to hold a general election

Labour party [policy](#), adopted at its party conference in September 2018, is that a General Election should be called if the Parliament rejects the Brexit withdrawal agreement negotiated by the Government. A vote of confidence under the Fixed-term Parliaments Act 2011 was tabled by Jeremy Corbyn following the rejection of the WA of 15 January. However, the no confidence vote was defeated by 325 votes to 306 the next day.

If another no confidence vote was held and won under the *Fixed-term Parliaments Act 2011*, at least seven weeks would need to pass before a General Election could be held. If the Government itself decided to hold a General Election, at least five weeks would be required. In either scenario, Article 50 would almost certainly need to be extended.

Under the *Fixed-term Parliaments Act 2011*, an early election can be called if there is a vote by two-thirds of MPs to trigger one or if the Government is defeated on a motion of no-confidence. There needs to be 25 Parliamentary sitting days between the dissolution of Parliament and the staging of a General Election (at least five weeks). However, if the Government is defeated on a no confidence vote, there is a period of 14 calendar days during which an alternative Government can be formed and confirmed. If an alternative Government is not confirmed, then the Prime Minister can recommend a suitable polling day to the Crown (taking into account the 25 sitting days from dissolution requirement). A period of at least seven weeks would therefore be required (if going through the 'no confidence' route), although there may be Parliamentary business which the Government wishes to see completed, potentially extending the period before dissolution further.²⁵

A General Election is not now possible until May 2019 either under the no confidence route or if the Government sought to trigger one and dissolve Parliament in the last week of March. Once a General Election is held, a new Government will most likely also need additional time to discuss the WA and PD and possible revisions to them with the EU.

3.5 Extension to stage another referendum

Another referendum, including an option to remain in the EU, is favoured by the Liberal Democrats, Scottish National Party and the cross-party [People's Vote](#) campaign, also including some Labour MPs and a small number of Conservative MPs.

On 9 February 2019, Labour MPs Phil Wilson and Peter Kyle [called](#) for the WA to be approved by the House of Commons but for this to be made conditional on a binding public vote being held, with the options of the UK either leaving the EU under the terms of the WA or remaining in the EU under the UK's existing membership terms. This has the support of [some](#) Conservative MPs. This idea was also previously put forward by EU citizens' group New Europeans, alongside a [proposal](#) that the referendum be held

²⁵ For further analysis of the requirements of Fixed-term Parliaments Act 2011, and no confidence motions under it, see House of Commons Library Insight [No confidence motions and early general elections](#), 18 December 2018.

on the same day as the EP elections on 23 May (with UK participation in the elections).

The Government opposes holding another referendum on EU membership. Official Labour party [policy](#) has been that the option should be left on the table, should Parliament vote down the Government's deal and it is not possible to hold a General Election. After the Labour party's alternative approach to Brexit set out in its amendment to the Government's motion on 27 February was defeated, Labour leader Jeremy Corbyn [said](#) that Labour would "back a public vote in order to prevent a damaging Tory Brexit or a disastrous no deal outcome" while also continuing "to push for the other available options to prevent those outcomes". However, significant numbers of Labour MPs [reportedly](#) oppose holding another referendum.

An amendment to the Government's motion on extending Article 50 which requested that the extension be sufficient to legislate for and conduct a second referendum with the option of remaining in the EU was defeated by [334 votes to 85](#) on 14 March. The amendment was supported by the Liberal Democrats, Scottish National Party, Plaid Cymru, Independent Group of MPs and Green Party. The Labour party was whipped to abstain but 25 Labour MPs voted for the amendment and 18 against. The Shadow Brexit Secretary Sir Keir Starmer said it was [not the right time](#) for such an amendment. This was also the line taken by spokespersons for the People's Vote campaign.

Holding another referendum would require Article 50 to be extended for several months and most likely beyond July. How quickly a second referendum could be held would partly depend on statutory requirements, but it would also be highly influenced by political considerations. Accurately estimating how quickly a referendum would be held is not possible, although there have been different estimated timetables circulated. These vary from 16 weeks (the Liberal Democrats), to 22 or 28 weeks depending on the question (UCL Constitution Unit) to one year (the Government). Additional time would then be needed if further negotiations with the EU were needed under Article 50.

In order to hold another referendum Parliament would need to pass legislation to allow for the poll to take place. This would also involve question testing by the Electoral Commission and would be followed by a statutory campaign period of 10 weeks.²⁶

Primary legislation would be needed to provide for the franchise to be used, the question to be asked and how the detailed conduct regulations to allow electoral staff to hold the referendum would be implemented. The Government is currently opposed to a second referendum and it would be difficult for any legislation to progress without Government backing. The passage of any Bill would partly depend on the length and complexity of the Bill, how many amendments were tabled, and whether the Bill had broad cross-party support or whether it was controversial. The timings could also

²⁶ For an overview of what would be required for a referendum to be held see the House of Commons Library Insight, [A second Brexit referendum? The rules explained](#) 19 December 2018.

be affected if the Bill sought to change the regulatory framework for referendums.

Bills can be timetabled in the Commons, but a programme motion would need to be approved by the House. There are no equivalent programming provisions in the House of Lords and a controversial Bill could take considerably longer there. For example, the *Parliamentary Voting System and Constituencies Act 2011*, which contained the contentious provisions for redrawing Parliamentary constituency boundaries, had seventeen sessions in committee, three sessions on report in the Lords and four sessions of ‘ping pong’ between the Houses before being passed.

The Electoral Commission then has a statutory duty set out in the [Political Parties, Elections and Referendums Act 2000](#) (PPERA) to [assess any referendum question](#) proposed in legislation for its ‘intelligibility’: are the options clear, simple and neutral? This has typically taken about 10 weeks, but the way the Commission assesses a question is not set out in legislation. It can consider the wording “in such a manner as they may determine”. The final decision on the format of the question rests with Parliament.

The Electoral Commission also has another statutory role in designating lead campaigners. This occurs during the statutory campaign period of 10 weeks. The first four weeks is the period for registered campaigners to apply to be the lead campaign groups. The next two weeks are the period in which the Commission assesses applications to be lead campaign groups for each possible outcome and designates those groups. In the final four weeks, the designated lead campaigns can utilise the benefits of designation – which include a grant of up to £600,000 and higher spending limits than other registered campaigners

The [Constitution Unit](#) of University College London produced a report in October 2018 which outlined a possible timetable for another referendum. It estimated that it would take at least 22 weeks to hold a referendum, following Parliament’s initial decision. This is required for passing legislation, question testing by the Electoral Commission, and preparing and holding the campaign. An extra six weeks might be needed if a three-option question were used (i.e. the Government’s deal vs no deal vs remaining in the EU). If Parliament took a decision in the last week of March to hold another referendum, according to this timetable polling day could occur at the earliest on 29 August 2019 for a two-option question (‘deal’ versus ‘remain’) or 10 October for a three-option vote.

However, a Government [memo](#) shown to MPs in January suggested that a referendum would take a year to prepare, including 7 months for the passage of primary legislation, 12 weeks for questions testing (given the increased complexity of question testing), 6 weeks for the passage of secondary legislation, 6 weeks for Electoral Commission designation of campaigns, and a further 10 weeks of campaigning.

Following on from this, the Liberal Democrats said it was wrong to say a referendum would take a year, and suggested a 16-week [timetable](#) to hold a referendum. This would involve 6 weeks to pass legislation, plus the 10-week statutory campaign period (comprising the designation of campaigns).

Such a timetable would mean a referendum on 18 July if a decision to stage a referendum was taken in the final week of March.

4. Complications in extending Article 50: European Parliament elections

One complication of extending Article 50 beyond May 2019 is that European Parliament (EP) elections are due to take place on 23-26 May 2019 and current plans in the EU and the UK are based on the UK not taking part. The newly elected Parliament will sit for the first time on 2 July.

A number of EU sources and legal experts²⁷ have said that an Article 50 extension would be possible up until 1 July without the UK taking part in the EP elections. This point of view was supported in the [leaked Council of EU document](#) used to brief EU Permanent Representatives on 15 March. But it said that any extension beyond 1 July would not be possible unless the UK held EP elections on 23-26 May. The document included [draft language](#) for a Council decision stating that any longer extension “shall cease to apply on 1 July 2019 in the event that the United Kingdom has not held the election to the European Parliament in accordance with applicable Union law”. Statements from the European Commission have however indicated that the UK would have to participate in the elections if still a Member State on 23-26 May even if it then left the EU before 2 July.

[A European Commission document](#) circulated on 20 March states that there is a binary choice between a short extension up until 23 May in which the UK leaves the EU just before the EP elections, or a longer one beyond this date for which the UK will be obliged to hold EP elections. It states that an extension beyond 23 May without UK participation in the election would create legal uncertainty and warns 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 Parliament seats having been reallocated.

The final sitting of the outgoing EP is scheduled for 18 April 2019. This creates a further complication given that the EP’s consent is required for the WA.

4.1 European Parliament approval of the WA

The procedure for EU approval of the WA is set out in Article 50 TEU. This provides that once a withdrawal agreement is agreed between the EU and the departing Member State, it will be approved by the Council of the EU, acting by a super qualified majority²⁸ (and without the UK’s participation), after obtaining the consent of the EP.

²⁷ For example, former head of the legal service of the Council of the EU, Jean-Claude Piris [suggested](#) in November 2018 that the UK would not have to participate in the EP elections as long as the Article 50 period is not extended beyond 1 July.

²⁸ A ‘super-qualified majority’ is defined as at least 72% of the members of the Council representing Member States comprising at least 65% of the population of the EU. This means at least 20 Member States will need to approve the WA.

The EP vote will be by a simple majority and UK Members of the EP will be able to participate in the vote.²⁹

The Council must authorise the signature of the WA, before sending it to the EP for its consent. The Council adopted the [decision](#) authorising the signature on 11 January 2019, and the WA is now awaiting scrutiny in the EP. On 30 January, the President of the EP referred the WA for scrutiny by the EP's Committee on Constitutional Affairs ([AFCO](#)).

AFCO has responsibility for drafting a report and motion on the WA on the basis of which the EP will vote or not for consent. A Brexit Consent Group has been established within AFCO, chaired by AFCO chair Danuta Hübner and also including the EP's Brexit Steering Group co-ordinator Guy Verhofstadt who will act as rapporteur for the Committee's Brexit consent report and motion.

The original intention within the EP was that it would hold its vote on the WA after it had been approved first in the UK by the House of Commons. The EP had set aside time in its plenary session of 11 to 14 March 2019 to debate and vote on the WA, with the possibility of this also taking place in the plenary session of 25 to 28 March if the WA had not been approved in the UK in time for the earlier March plenary.

The possibility has also been discussed of the EP proceeding with ratification of the WA as previously planned, irrespective of whether the House of Commons has given its approval, so that is has done its part should the Commons approve the WA at a later date.

The AFCO Committee discussed ratification of the WA at its [meeting](#) on 20 February 2019. Professor Hübner [said](#) that while in principle the Committee could proceed further with the consent procedure, the Brexit Consent Group had agreed that the EP plenary vote would wait until the EP is notified by the Council that the deal has been signed. The Committee will require two meetings to complete scrutiny of the WA before it goes to the plenary.³⁰

At the [AFCO meeting held on 7 March 2019](#), Professor Hübner set out a timetable of Committee meetings in order to have the Consent motion ready for the EP plenary at the end of March should the House of Commons approve the WA in its scheduled vote on 12 March. Mr Verhofstadt said that AFCO would only start its work once there had been a positive vote in the House of Commons, but if this did not occur then the Committee would not start the process.

²⁹ See European Commission Fact Sheet, [Questions & Answers: Publication of the draft Withdrawal Agreement between the European Union and the United Kingdom](#), 28 February 2018.

³⁰ At the [AFCO meeting held on 7 March 2019](#), Professor Hübner set out a timetable of Committee meetings in order to have the Consent motion ready for the EP plenary at the end of March should the House of Commons approve the WA in its scheduled vote on 12 March.

If the Article 50 period is extended beyond 29 March then the EP could also hold its vote on the WA in its final plenary sitting before the EP elections on 15 to 18 April 2019³¹.

Should Article 50 be extended beyond this point (and the WA has not been ratified by the EP at this point, or there is an amended version of the WA requiring the EP's consent), then there is also the possibility of the outgoing EP being recalled any time up to the first sitting of the newly elected EP on 2 July.

The EU legislation establishing direct elections to the European Parliament provides that the powers of the outgoing EP shall cease upon the opening of the first sitting of the new EP.³² The EP's Rules of Procedure provide that the President of the EP shall convene Parliament "on an exceptional basis" following a request of a majority of its component Members or at the request of the Commission or the Council, and after consulting the Conference of Presidents (the leaders of the political groups in the EP). The President shall also have the right, with the approval of the Conference of Presidents, to convene Parliament on an exceptional basis in cases of urgency.³³ A third of Members will need to be present for the EP to be in quorum and a simple majority of those present will be needed for its consent.³⁴

The possibility that the EP could be recalled after 18 April was confirmed by Professor Hübner at the [AFCO meeting on 18 March 2019](#). There would also need to be extraordinary meetings of AFCO to prepare for the EP plenary.

While the WA has to be approved by the EP, the Political Declaration does not. If an extension of Article 50 therefore resulted in a change to the Political Declaration but not the WA (and the WA had already been ratified by the EP) then the EP would not need to be recalled to give its approval.

4.2 Redistribution of European Parliament seats when UK leaves

Extending Article 50 beyond 23-26 May could result in UK MEPs being elected and taking their seats for a short period of time before the UK then leaves the EU. Some EU leaders may be reluctant to allow this to occur, particularly as 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

³¹ This was confirmed as a possibility by Professor Hübner at the AFCO meeting on 20 February.

³² See Article 11 of [Consolidated version of the Act of 20 September 1976](#), as last amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002.

³³ See Rule 146, Convening of Parliament, [Rules of Procedure of the European Parliament](#).

³⁴ Rule 168 provides that a quorum shall exist when one third of the component Members of Parliament are present in the Chamber, but that all votes shall be valid whatever the number of Members voting unless the President, on a request made by at least 40 Members before voting began, establishes that a quorum is not present. If fewer than 40 Members are present, the President may rule that there is no quorum.

with five additional seats each, and Italy and the Netherlands with three additional seats each. Ireland will get an additional two seats.³⁵

However, this legislation 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, having already begun preparations for the elections on the basis of an increased number of MEPs [some countries](#) may be reluctant to countenance an Article 50 extension that disrupts these plans.

The European Commission document on 20 March [stated](#) that any Article 50 extension should be limited to until 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 that a change of policy in the UK (e.g. revoking Article 50 or requesting a second extension to stay in the EU for a longer period) could lead to a late EP election in the UK “and persons validly elected in 14 Member States not taking up their positions”. 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”.

4.3 Could European Parliament elections be held without UK participation?

Government position

A Government [note](#) on ‘Parameters for Extending Article 50’ was published on 14 March 2019. Regarding the EP elections it said 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.

The Government note also states that this would also mean that it would not be possible to seek a second extension after an initial short extension if EP elections had not been held. In addition to these considerations, it explains that for the UK to participate in 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.

³⁵ The other gainers will be Denmark, Estonia, Croatia, Austria, Poland, Romania, Slovakia, Finland and Sweden with one additional seat each.

Would the EP be properly constituted?

Regarding the question of the EP being properly constituted without Member States having held elections, 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”.

Richard Corbett, leader of the Labour party group in the EP and former adviser to the President of the European Council on constitutional issues, has also stated on his [blog](#) that a failure to hold EP elections by a Member State does not render the EP invalid. He said that the EP would still be able to legally act without UK MEPs, including to give its consent to the WA. Mr Corbett points out that “if failure by any country to elect its MEPs were to invalidate the Parliament, then any country could choose to paralyse the Parliament, and therefore the EU, simply by not organising its elections”.

Reporting on the EP’s legal advice, the *Financial Times* said that some lawyers at the European Commission and European Council were sceptical that the UK could avoid electing MEPs without fatally undermining the authority of the new Parliament and the subsequent decisions it would take, including the scheduled approval of a new European Commission in 2019. It quoted one senior EU diplomat as saying it would be “unthinkable” that the UK could still be a Member State without holding elections and sending MEPs to the Parliament: “That would bring the risk of an illegally composed European Parliament”. Another senior EU official said there could be some “flexibility at the margins” but that officials were reluctant to “run the risk of an EU institution being constituted improperly”.

These doubts were also raised in the [leaked Council of EU document](#) reported on 15 March. It 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. It said that EU acts “adopted with the participation of an irregularly composed parliament would be open to legal challenge on this ground, which would put the security of legal relations in the Union seriously at risk, on a very large scale”.

EU citizens’ rights to vote in EP elections

While the EP legal advice states that the non-participation of the UK in the EP elections would not prevent the EP from being validly constituted on 2 July, this does not mean that the UK would not be in breach of its EU Treaty obligations to hold elections to the EP. A failure to hold elections would mean the UK 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).

Conservative MEP Charles Tannock has [suggested](#) that there is “a school of thought” that UK participation in the European elections could be postponed with a catch-up election if the UK then decided to remain in the EU (for example following the result of another referendum). However,

Tannock suggests that this would still require the election to be held in time for the first sitting of the EP on 2 July. He also said that whether or not UK participation in the European election could be deferred in this way could require clarification from the Court of Justice of the EU.

Richard Corbett has also [suggested](#) a scenario could occur with UK participation in the EP election deferred pending a decision on whether the UK was reversing its decision to leave the EU. Mr Corbett explained on his [blog](#) that there may be “loopholes or special procedures that both EU and UK politicians could agree to avert the need for the UK to hold the elections in May, given the unprecedented political situation over Brexit”. If the UK decided during the extended Article 50 period to remain in the EU “it would need to have a catch-up election as soon as practical as there is a Treaty obligation for UK citizens to be represented in the European Parliament”. However, Mr Corbett said that if Article 50 is extended beyond 1 July, then the UK would be legally required to participate in the elections:

If the UK simply didn’t organise elections in circumstances where it is legally obliged to do so, then there could be a legal challenge from voters arguing that they have a right to elect their representatives (or indeed from aspiring candidates).

In a [blog](#) assessing the possibility of extending Article 50, Agata Gostyńska-Jakubowska, senior research fellow at the Centre for European Reform, points out that “the UK would be at fault” if it did not hold EP elections if it was still in the EU at this point, “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.

Appointing national parliamentarians or extending existing MEP mandates

Richard Corbett also previously [mooted](#) a solution whereby the House of Commons would appoint representatives from its own ranks to the EP in order to bridge any period between the EP elections and the UK leaving the EU. This would be a reverse mirror of what happens when new Member States accede to the EU prior to EP elections.

Luxembourg’s Foreign Minister Jean Asselborn put forward a similar idea on 26 February 2019, suggesting that the UK could [nominate MEPs for a short period](#) if Article 50 was extended for more than three months. However, any such arrangement would need to be short-term and agreed in advance, and European Parliament elections would need to be held if the UK stayed longer in the EU. Mr Asselborn put forward this idea as a way of facilitating the UK staging another referendum with an option to remain in the EU.

Charles Grant, Director of the Centre for European Reform, has [suggested](#) that senior officials in key Member States believe that if the European Council wants to give the UK an Article 50 extension beyond 1 July, the European Parliament issue could be solved in a one-page protocol that could be ratified relatively quickly and would mean the UK would not need to hold the elections. Richard Corbett has however suggested that such a

derogation would imply a Treaty change requiring ratification by all 28 Member States and could be a complicated and lengthy process³⁶.

In a [twitter thread](#) on 14 March, Eleanor Sharpston, the UK Advocate General at the Court of Justice of the EU said that the way in which the EP elections had been presented as an obstacle to a longer extension to Article 50 was “an oversimplified and ultimately fallacious presentation of the situation”. She said that there were alternatives to the UK holding the EP elections if there was a longer extension. These included [extending the mandate of existing UK MEPs](#) or reverting to the old EP practice (prior to the first direct EP elections in 1979) of the UK sending nominated MPs to sit as MEPs. Ms Sharpston referred to the [Treaty of Accession](#) when Croatia joined the EU which provided (in Article 19) for it to hold an ad hoc European Parliament election when it joined the EU in 2013, but also had a provision that its national parliament could send representatives to sit as MEPs until the next EP election if it joined the EU within six months of the election.³⁷

EU law currently states that the office of Member of the European Parliament is incompatible with membership of a national parliament and that EP elections should be held at the same time within a set Thursday to Sunday period in each Member State³⁸.

The former head of the legal service of the Council of the EU, Jean-Claude Piris [disagreed](#) with Advocate General Sharpston, saying that Article 50 on withdrawing from the EU does not have the same legal basis to do this as Article 49 TEU relating to accession to the EU. Under Article 49 TEU, Croatia’s Treaty of Accession [needed to be ratified](#) by all 27 Member States (and the Belgian regional parliaments).

Professors Catherine Barnard and Steve Weatherill have suggested on the EU law analysis blog that extending the mandate of existing UK MEPs may be possible. They refer to Article 14(3) TEU which states that MEPs “shall be elected for a term of five years by direct universal suffrage in a free and secret ballot” and suggest that the European Council could agree to current UK MEPs continuing to sit without the need for election in May. They argue:

In our view, this would not contradict Article 14(3) TEU: those MEPs have, after all, been elected for a term of five years by direct universal suffrage in a free and secret ballot – just not in May 2019, but rather in 2014³⁹.

However, on the same blog Professor Eleanor Spaventa argues that if the UK did not hold EP elections while still a Member State it would be in breach of both Article 39(2) of the EU Charter of Fundamental Rights (MEPs shall be elected by direct universal suffrage) and Article 3 of Protocol 1 of

³⁶ The European Parliament’s Brexit Steering Group co-ordinator Guy Verhofstadt also agreed with this view in an exchange with Mr Corbett at the [AFCO meeting held on 7 March 2019](#).

³⁷ Croatia joined the EU on 1 July 2013 and held a European Parliament election ahead of this in April 2013.

³⁸ See Article 7 and Article 10 of [Consolidated version of the Act of 20 September 1976](#), as last amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002.

³⁹ See Catherine Barnard and Steve Weatherill, [Extension and elections: We need to talk about Article 50](#), EU law analysis blog, 14 March 2019

the European Convention on Human Rights (the right to free elections)⁴⁰. Professor Spaventa argues that the idea of extending the mandate of current UK MEPs is

far from being persuasive, not only because there is no such possibility in the Treaties, but also given that the passive electorate has changed in the past five years and that prolonging MEPs would entail the disenfranchisement of those who have come to voting age in the past 5 years.

The Council of EU [document leaked](#) on 15 March referred to “speculations” about the possibility of allowing the UK to extend Article 50 without holding EP elections but said that the “only way to do so would be a Treaty change” and that past experience showed that ratification by all Member States required at least two years. This meant that “this possibility is not feasible in practice”.

Views from the European Parliament and Commission

The Chair of the EP’s Constitutional Affairs Committee Danuta Hübner has said that the UK would be in breach of the EU Treaties if it did not take part in the EP elections at the end of May, even if the UK then left the EU prior to 2 July⁴¹. A legal opinion issued by the German Parliament’s Europe department has similarly stated that the [UK would be obliged to hold the EP elections](#) on 23 to 26 May, if Brexit is delayed. It said that a failure to hold elections would amount to a “violation of the active and passive voting rights of British nationals”, as well as of EU citizens living in the UK, and could lead to a court case by citizens or treaty infringement proceedings by the European Commission against the UK.

In a press [briefing](#) on 18 January 2019, European Commission chief spokesperson Margaritis Schinas said that the European Commission, “as the guardian of EU treaties, suggest caution with any suggestion that the right of EU citizens to vote in the European Parliament elections, according to the rules that are applicable, could be called into question”. He said:

We have a legally composed European Parliament which requires directly elected MEPs from all member states at the latest on the first day of the new term of the new parliament, which this time is the second of July.

He added: “This is the legal situation. As guardians of the treaty we would prefer to stay within the applicable legal order”. Mr Schinas also said that the discussion was theoretical given that no request had come from the UK to extend Article 50.

In an interview on 18 February 2019, Commission President Jean-Claude Juncker said that the [EU would not oppose an extension](#) of Article 50 if requested by the UK and that this could involve UK participation in the EP elections saying that this “would be an irony of history” and that he “cannot rule it out”.

⁴⁰ Eleanor Spaventa, [Of extension of UK membership and basic democratic principles: why the UK will need to hold EP elections if its membership of the EU is prolonged beyond the 22nd of May](#), 17 March 2019

⁴¹ Professor Hübner made this point at the AFCO meetings of 20 February and 7 March 2019.

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On 19 February, Mr Juncker said in a [speech](#) in Germany:

If the UK were to stay beyond May, as a member of the EU it must organise the European election. . . The treaty is the treaty and this is what it says.

On the same day, Stefaan De Rynck, adviser to the EU's chief Brexit negotiator Michel Barnier, said at an [event in London](#), when asked about this scenario that:

if you extend Article 50 you extend membership . . . so you extend also all the rights and obligations of membership, and an obligation of membership is to organise European elections . . . we are the guardian of the treaty ...it's really a European Council decision, I'm sure Donald Tusk will ask President Juncker and Michel Barnier for their advice.

In an interview with the German newspaper *Die Welt* published on 1 March, Mr Barnier [confirmed](#) the view that there would be legal problems if the UK was still a Member State on 23-26 May but did not hold European Parliament elections, referring to the UK's "rights and obligations" as a Member State.

The [letter](#) from President Juncker to President of the European Council Donald Tusk on 11 March 2019, referring to the new texts agreed with the UK that evening, was more categorical about possible UK participation in the EP elections. It said:

I would like to stress that the United Kingdom's withdrawal should be complete before the European elections that will take place between 23-26 May this year. If the United Kingdom has not left the European Union 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.

The House of Commons Exiting the EU Committee [response](#) to the Government's second 'meaningful' vote defeat published on 13 March 2019 referred to this statement from Mr Juncker and said:

the Committee heard a different view in a recent discussion in Brussels to the effect that there would not be a problem with not holding these elections provided that the UK left the EU by the end of June, because the first session of the new European Parliament will not convene until 2 July.

The Guardian [reported](#) on 13 March that officials representing European Council President Donald Tusk had informed ambassadors on 11 March that they believed an extension until 1 July was still feasible as the European Parliament would not have convened until that point. It quoted sources as suggesting that the European commission was simply preparing the ground for a formal infringement notice on the UK should the Government not organise elections but that 23 May was not the outer limit of an extension.

However, 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:

President Juncker said to the prime minister that he thinks it's a good idea she sets out her thoughts to the leaders ahead of the EU Council.

However, the president has clearly warned the prime minister against including a date for the extension that will be after the European parliament elections. That's why he repeated in this call his advice, which he set out in his letter on March 11, that the withdrawal has to be complete before May 23, otherwise we risk facing institutional difficulties and legal uncertainty, given the European elections date.

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.

Speaking in the [Commons' debate](#) on extending Article 50 on 14 March, Shadow Brexit Secretary Sir Keir Starmer said he had been discussing the issue in Brussels for six months and had heard three different views from lawyers, officials and politicians:

One view is that we cannot get past May without participating in the elections. Another is that we cannot get past June without doing so. Another is that it might be possible to add a protocol or agreement to the treaty that would allow a long extension without EU elections.

Holding EP elections at same time as a referendum

EU citizens' group New Europeans has [called](#) for an extension of Article 50 to enable UK participation in the EP elections on 23 May. These would be held on the same day as a binding referendum with the options of remaining in the EU on existing terms or leaving on the terms of the WA. If the referendum resulted in a vote to remain, newly elected UK MEPs would take up their seats in the Parliament. If the referendum resulted in a vote in favour of leaving on the terms of the WA, the new distribution of EP seats would apply as per the pre-agreed formula.

4.4 Appointment of new European Commission

Following the election of the new European Parliament there will then follow a process to appoint a new President of the European Commission and other Commissioners. The new Commission will not take office until the beginning of November. This could delay matters further if Article 50 negotiations go beyond 1 July.

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