

# Extending the Article 50 deadline?

Process, politics & potential outcomes

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## UK process and no deal

Currently, the United Kingdom is set to leave the European Union (EU) on the 29 March 2019 with or without an agreed deal. It is this impending deadline and the seeming inability for a deal to be agreed within the United Kingdom which has led to a growing concern about the potential for the UK to leave the EU without a deal. Government economic analysis and business leaders have consistently stressed the harm such an outcome would cause on the UK economy. It is for this reason that if the Prime Minister cannot bring back an acceptable deal before the deadline, it can be expected that the UK Parliament would attempt to force the Prime Minister to extend Article 50 TEU, the article which dictates the day on which the UK would formally leave the EU.

It is important to note that when you **breakdown the current numbers** in the House of Commons, there is no obvious consensus for any Brexit outcome. The only consensus that can be found is against a “No Deal” Brexit. Following the “Meaningful Vote” on the 15 January 2019, where the Prime Minister’s **Brexit deal** was **defeated** by a majority of 230 MPs, the unease about a potential “No Deal” Brexit among MPs has become even more prevalent. On the amendable motion tabled by the Prime Minister which is meant to set out her Plan B for bringing back a deal acceptable to the Commons; MPs have tabled **amendments** aimed at preventing a “No Deal” Brexit.

It is likely that an **Amendment** tabled by the Chair of the Home Affairs Committee Yvette Cooper will pass. This amendment (b) has attracted a lot of cross-party support and interest. It has been backed by Nicky Morgan, Nick Boles, Dominic Grieve, Anna Soubry, Ed Vaizey, Hilary Benn, the SNP, LDs and Plaid Cymru. There have also been strong indications for the Labour Frontbench that they will support this Amendment too. It is therefore very likely it will be selected for debate by the Speaker.

Amendment (b) is intended to amend the Standing Orders (Commons rules) to allow time on Tuesday 5 February for the **European Union (Withdrawal) (No. 3) Bill** to be debated. If passed, it would create a legal mechanism for MPs to instruct the Government to seek an extension of Article 50 from the European Council, in order to avoid a no deal Brexit. Cooper’s amendment only allows time for the Bill to be debated.

In this scenario the legislature would take control to prevent a “No Deal” Brexit, however it is equally conceivable that if the deadline was fast approaching the executive could do the same.

## Revoking/Extending the Deadline – The EU’s next steps

The crucial difference between revoking and extending the Article 50 TEU process is that the UK does not have the unilateral right to extend the Brexit process beyond the 29 March deadline. For such an extension to be granted, it would need to be approved during a European Council meeting in which all 27 Heads of State of the remaining Member States agree to grant the extension. Given that the UK Government and MPs from both the Conservative and Labour Party have stressed the need to respect the outcome of the Brexit referendum, it seems almost impossible for the UK Government to use its power to revoke Article 50 TEU entirely. What would happen in the case of a request for a possible extension of the Article 50 deadline is less clear.

It seems unlikely that the EU will deviate from the main strategy it has held since the beginning of the negotiations: avoiding blame at all costs. Therefore, it would almost be unthinkable that the EU would unequivocally refuse an extension of the end-of-March deadline if requested by the UK. European Leaders would however need time to discuss and assess any possible extension, which means that it is highly likely that the EU will only decide on a possible extension on 21 March, the next scheduled European Council. EU leaders, including France's President Emmanuel Macron, have already made clear they want to avoid more special summits on Brexit.

It is equally unlikely that the EU would blindly agree to any extension, as any such request is likely to come with a second request to renegotiate the current deal – something which, according to the EU, does not fall within the realm of the possible. Guy Verhofstadt, the European Parliament's Brexit Coordinator added that "it is clear on EU's side that an extension will not be given as a blank cheque [...] we need to be absolutely clear that there should be a 'plan' before agreeing to it."

As stated by the EU's chief Brexit negotiator, Michel Barnier, the EU will need at least two questions answered: "why and how long?".

#### Short-term extension

A first, and potentially easiest, scenario the EU could agree to, is the case in which the EU only agrees on a short extension that would allow Theresa May to push her deal through the UK Parliament. Given her large defeat in the House of Commons, the likelihood of success is rather low.

#### Long-term extension

Another scenario would see a longer extension being granted by the EU on the basis of allowing the UK to hold a second referendum or a general election. This seems equally unlikely at the moment, as MPs fear the potential democratic crisis that could result from a second vote on the matter.

An additional hurdle to any possible extension comes from the European Parliamentary Elections which are taking place in May and will result in a first new Parliamentary sitting on 2 July. If the UK is allowed to stay in the EU past this date, it would raise question on whether the European Parliament would be democratically legitimate given the fact that the UK would most likely not have any MEPs. At the moment, Mr Barnier agreed that there is "no clear legal answer" to this electoral question.

#### **Potential scenarios**

Amongst the rising uncertainty, the most likely scenario seems for the EU to agree to a "conditional extension" in which it agrees to extend the deadline, but only when certain conditions have been met. This approach would also allow for multiple stages. A first short extension, for instance, in order to prepare for no deal or allow time for a deal to be ratified by the UK Parliament, could then be followed by a second longer extension, but only if, for instance, the UK agrees to hold a second referendum or a general election. This approach allows the EU to keep its options open, and most crucially would be in line with its current strategy of ensuring it cannot be blamed for any potential outcome.

### Key Brexit Dates

