

## BREXIT – UK PARLIAMENT REJECTS WITHDRAWAL AGREEMENT FOR THIRD TIME. WHAT HAPPENS NEXT?

The UK government has failed to secure the approval by the House of Commons of the Withdrawal Agreement on its third attempt (though the previous two included the Political Declaration).

The UK will now leave the EU with "no deal" on 12 April 2019 unless an alternative route is found.

This briefing sets out the next steps, possible alternatives and their implications.

### HOW DID WE GET HERE?

The European Council, which comprises the leaders of the EU's member states, agreed to delay the date of the UK's departure from the EU under Article 50 of the Treaty on European Union (TEU) from 29 March 2019 to 12 April 2019 or, if the House of Commons approved the Withdrawal Agreement by Friday 29 March, to 22 May 2019.

On 29 March the House of Commons rejected the Withdrawal Agreement for a third time, by a margin of 286 to 344, a majority of 58. This compares to margins of 230 and 149 on the two previous votes, though those were on both the Withdrawal Agreement and the accompanying Political Declaration on the future relationship between the UK and the EU. By contrast, the 29 March vote involved only the Withdrawal Agreement.

### WHAT HAPPENS NEXT?

As things stand, the UK will cease to be a member of the EU at 11pm on 12 April 2019, when the period in Article 50(3) TEU expires. The UK Parliament's recent vote to reject any 'No Deal' Brexit has no effect on this. In the absence of any further action, the UK's rejection of the Withdrawal Agreement means that the UK will revert to World Trade Organisation terms of trade with the EU and that both the UK and the EU will need to implement their unilateral 'No Deal' contingency plans.

The UK Government and Parliament are now faced with the option of asking for a long extension, or allowing the UK to leave the EU with no deal. When

#### Key issues

- The House of Commons rejected the Withdrawal Agreement for the third time on 29 March 2019, the date the UK was originally due to leave the EU.
- The UK will now leave with "no deal" on 12 April unless it requests a long extension to explore possible alternatives.
- Options include a general election, a second referendum or a different arrangement with the EU, such as a permanent customs union.
- A long extension would require the UK to hold European Parliament elections in May 2019.

Parliament voted on the latter option on 27 March 2019, a proposal to leave the EU with no agreement was rejected by 400 votes to 160.

The preamble to the decision of the European Council (Decision EU/2019/476) says if the House of Commons did not approve the Withdrawal Agreement by 29 March, the European Council:

*"(9) ... indicated that it expected the United Kingdom to indicate a way forward before 12 April 2019, for [the European Council's] consideration.*

*(10) This extension will have the consequence that the United Kingdom will remain a Member State with all the rights and obligations set out in the Treaties and under Union law. If the United Kingdom is still a Member State on 23-26 May 2019, it will be under the obligation to hold the elections to the European Parliament in accordance with Union Law. It is to be noted that the United Kingdom would have to give notice of the poll by 12 April 2019 in order to hold such elections.*

*(11) Such an extension excludes any re-opening of the Withdrawal Agreement. Any unilateral commitment, statement or other act by the UK should be compatible with the letter and the spirit of the Withdrawal Agreement."*

The UK must now decide whether to ask for such an extension.

Such an extension would be long. Some EU leaders, including European Council President Donald Tusk, have indicated their support for an extension of nine months or more. On 27 March, Mr Tusk appealed to the European Parliament to be *"open to a long extension, if the UK wishes to rethink its Brexit strategy"*. In the same message, Mr Tusk referred to a record-breaking petition to the UK Parliament for the revocation of Article 50 and to the protest march on 23 March in favour of a second referendum, attended by at least one million people, according to the organisers.

## **WHAT WOULD BE LIKELY TO HAPPEN DURING AN EXTENSION?**

First, a long extension would require the UK to participate in the European Parliamentary elections scheduled to take place from 23 to 26 May 2019.

The request for a long extension may cause significant political changes in the UK, opening the door to various options, including a general election and a second referendum. This has been reinforced by statements from the EU, which has repeatedly made clear that it will only agree to a long extension if there is a significant change of direction on the UK side.

To identify a way forward that commands the support of a majority in Parliament, the House of Commons held a series of indicative votes on 27 March 2019. MPs were able to vote on a menu of eight options on how to proceed, ranging from a revocation of Article 50 to a 'No-Deal' Brexit. As had been anticipated, no proposal secured majority backing, although the margins by which the motions were rejected differed significantly. A further round of indicative votes will take place on Monday 1 April. On this occasion, it is expected that the range of options will be narrowed down to only include those motions that were closest to winning majority support.

The options with the highest number of votes were:

- A confirmatory public vote on any withdrawal agreement (268 for, 295 against);
- A permanent customs union (264 for, 272 against);
- A customs union and "close alignment" with the EU's single market (237 for, 307 against);
- Common Market 2.0 (188 for, 283 against); and
- Revoking Article 50 to avoid no deal (184 for, 293 against).

If no course of action can be agreed, the UK may hold a general election, which would allow political parties to set out their proposals in their manifestos. A party that obtained a majority would treat it as a clear mandate for its policy.

## **WHAT DOES THIS MEAN FOR THE DRAFT WITHDRAWAL AGREEMENT?**

Despite the wide range of available options outlined above, each of which concerns the UK's long-term relations with the EU rather than the terms of withdrawal, the starting point of a negotiated Brexit would almost certainly still be based on the current Withdrawal Agreement. This is because, unless Article 50 is revoked or a 'No-Deal' policy adopted, the EU considers that the draft Withdrawal Agreement can accommodate all possible long-term arrangements.

The draft Withdrawal Agreement is virtually silent on the future relationship between the UK and the EU. As a result, a different approach to long-term relations must be recorded in the non-binding 'Political Declaration' that accompanies the Withdrawal Agreement. At present, the wording of the Political Declaration is deliberately open-ended, reflecting the EU's insistence that detailed negotiations of the trade relationship can only take place after the conclusion of the Withdrawal Agreement and the differences of opinion in the Cabinet.

It follows that, if there is to be a long-term deal between the UK and the EU, the Withdrawal Agreement (or something very like it) will still need to be approved by Parliament, despite having rejected it on three occasions. Current legislation provides that the Government can only ratify the Withdrawal Agreement if it and the Political Declaration are approved by the House of Commons and an Act of Parliament has been passed containing provisions for the implementation of the Withdrawal Agreement

If the Withdrawal Agreement were, eventually, to be approved by the House of Commons, the next step is for the UK to implement the Withdrawal Agreement into UK law by enacting the European Union (Withdrawal Agreement) Bill. This requires approval from both the House of Commons and the House of Lords. Since the representatives in the House of Lords are not elected, they are unlikely to vote against a motion of significant constitutional importance that is supported by a majority of MPs. Nevertheless, the enactment process can take time.

In addition, from an international law perspective, the UK will have to ratify the Withdrawal Agreement under the provisions of the Constitutional Reform and Governance Act 2010. This requires that international treaties must be presented to Parliament at least 21 days before ratification.

## WHAT IF THE UK LEAVES WITH NO DEAL?

If Article 50 has not been revoked and no further extension has been granted by 12 April, the UK will leave the EU on 'No Deal' terms. As provided for under Article 50, the EU Treaties will cease to apply to the UK on that date.

For detailed guidance in relation to a 'No Deal' Brexit, please refer to our previous briefings on this topic:

- [Brexit Update - EU 'No Deal' contingency planning](#) (January 2019)
- [Preparing for an imminent Brexit: potential disputes under commercial contracts](#) (January 2019)
- [UK: Brexit - What happens to EU citizens if there is no deal?](#) (January 2019)
- [Italy provides for post-Brexit temporary regime](#) (March 2019)
- [Poland prepares for no-deal Brexit](#) (March 2019)
- [Spain prepares for 'no-deal' Brexit](#) (March 2019)
- [Czech 'Brexit Act' and financial services](#) (February 2019)
- [Brexit deal or no deal? – The Netherlands mitigates the risks with legislative measures](#) (January 2019)
- [Germany prepares for 'No Deal' Brexit - Update](#) (December 2018)
- [France getting ready for a 'no deal' Brexit](#) (November 2018)

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