



## **ABS POLICY PAPER No. 14**

### **Brexit: Timetable and next**

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#### **Introduction**

On 10 April 2019 the European Council agreed to extend the deadline under Article 50 for the UK to leave the European Union until 31 October 2019 with the option for the UK to leave earlier if the Withdrawal Treaty was ratified. This was the second extension agreed to the originally planned departure date of 29 March. The European Council also stated that the UK must participate in the European Parliament elections on 23-26 May if it failed to ratify the agreement by 22 May. Should it both fail to ratify the agreement by then and not participate in the elections, then the UK would leave on 1 June.<sup>1</sup>

The European Council stressed that it was not prepared for the Withdrawal Agreement to be re-opened and that full negotiations about the future relationship could not begin until the UK had left the EU. But it was willing to “reconsider the Political Declaration on the future relationship in accordance with the positions and principles stated in its guidelines and statements, including as regards the territorial scope of the future relationship” (para. 5).

The European Council said it would review the progress on Brexit at its June meeting. Meanwhile, the European Parliament has not given its approval to the Withdrawal Treaty, which is a necessary condition for the EU to ratify the Treaty. The European Council did not rule out a further extension of the Article 50 period. It also stated that the UK had, in principle, the right to revoke its notice to leave at any time.

#### **Current timetable**

The European Council fixed 31 October as the end date of the current Article 50 extension. It also said that, if the UK ratified the Withdrawal Treaty before then, it would leave the EU on the first of the month following ratification. “Ratification” means not just approval by the House of Commons of the Treaty in a “meaningful vote” (i.e. a vote held in accordance with the provisions of s.13 of the *European Union (Withdrawal) Act 2018*; see below) but also the

passing of the necessary legislation to incorporate the provisions of the Treaty into domestic law, without which the UK could not complete its side of the ratification process.<sup>2</sup>

The following are the key dates:

22 May	Last date for UK to ratify the Withdrawal Treaty if it is to avoid European Parliament elections
23-26 May	Date of European Parliament elections, including in the UK
1 June	Date the UK will leave if it has not ratified and fails to hold European Parliament elections; this is also the first date the UK could leave if it completed ratification in time
20/21 June	European Council meeting, Brussels (this meeting of the Council would, if following previous practice, nominate a candidate for the post of President of the Commission for the Parliament to consider)
28/29 June	G20 meeting, Osaka; the UK and the EU and several other Member States are G20 members (the EU is represented by the Presidents of the Commission and of the European Council)
2 July	Inaugural plenary session of the new European Parliament
17/18 October	European Council meeting, Brussels (this meeting would be expected to formally appoint the new Commission)
31 October	End date of current extension to Article 50 period

**UK approval process**

Parliamentary procedure

There have now been three votes in parliament on the Withdrawal Treaty; it has been defeated on each occasion. Following requests from MPs after the second defeat on 12 March, the Speaker examined the question of whether or not the Government could repeatedly bring forward the Treaty for approval even though it had already been rejected by the House. The issue was raised because of a Commons convention that (in the words of the authority on parliamentary procedure, *Erskine May*), “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”.<sup>3</sup>

On 18 March 2019 the Speaker ruled that this long-standing convention applied and that the Government could not “resubmit to the House the same proposition or substantially the same proposition as that of last week”.<sup>4</sup> Accordingly, the Government brought forward the

Withdrawal Treaty alone, that is, without the Political Declaration on the future relationship, for approval on 29 March. It was again rejected. But even had it passed, this vote would not have constituted a “meaningful vote” as required by the 2018 Act because s. 13 says that parliament must agree to both the Withdrawal Treaty and the political declaration. A further vote would have been needed at a later date.

The situation remains that unless or until a majority of MPs approve the Withdrawal Treaty and the Political Declaration, the criteria in the 2018 Act are not met and the UK cannot ratify any agreement with the EU.

### Legislation

Approval by Parliament of the Treaty and the Political Declaration is one step; to ratify it, and to meet a second test in the 2018 Act (in s. 9(1)) requiring a statute approving the agreement with the EU, legislation is needed to incorporate various provisions of the Treaty in domestic law.

The Bill required to give effect to the Withdrawal Treaty in domestic law, which has not yet been published, is necessary for several reasons:

- to implement the commitments made to EU citizens by the UK in domestic law;
- to authorise the financial settlement reached with the EU;
- to authorise contributions to the EU budget during the transition period;
- to amend the *European Union (Withdrawal) Act 2018* to permit the continued jurisdiction of the European Court of Justice during the transition period, and in connection with EU citizens’ rights, for up to eight years later;
- to retain the *European Communities Act 1972* for the duration of the transition period.<sup>5</sup>

While it is possible for Parliament to agree this legislation without first approving the Treaty and the Political Declaration in a “meaningful vote”, the latter would still need to be held (and won by the Government) before the legislation could be brought into force. And the legislation would have to pass through both Houses, in neither of which does the Government have a majority.

### No deal Brexit

On 8 April 2019 Parliament passed the *European Union (Withdrawal) Act 2019* which removed the 29 March 2019 as exit day from s. 20 of the 2018 Act. Its purpose was to end the possibility of a no deal Brexit on 12 April. Section 1 of the Act set 22 May as the earliest date that the UK could leave the EU but allowed for a later date to be negotiated with the EU (as subsequently happened).<sup>6</sup>

The Act also altered the 2018 Act (in s. 2) so that regulations altering exit day in future would not need to be approved by affirmative resolution in Parliament but could only be annulled by either House voting against. Subsequently, the Government used this change to establish 31 October as the new exit date in law with regulations adopted on 11 April.<sup>7</sup>

It is still possible that the UK could find itself leaving without an agreement with the EU. In present circumstances there are two ways in which this could happen:

- if the UK failed to ratify and to participate in the European Parliament elections – in which case it would leave on 1 June;
- if it participated in the European Elections but did not ratify the Withdrawal Treaty by 31 October 2019 and the European Council declined to extend Article 50 beyond that date.

Both Houses of Parliament have rejected a no deal Brexit on a number of occasions; there is no indication of a majority emerging in either House of Parliament which would support a no deal Brexit.

## **Breaking the log-jam**

### Negotiations with Labour

On 2 April the Prime Minister announced that she had invited the Labour Party to work with the Government on trying to find a proposal for the future relationship with the EU that could command a majority in Parliament. She did so following a seven hour meeting of the Cabinet and after no single proposition for that future relationship commanded a majority in the House of Commons in the so-called “indicative votes” on 27 March and 1 April.<sup>8</sup>

At the time of writing the negotiations with the Labour Party have not reached any conclusion. Given that a customs union with the EU commanded the highest level of support during the indicative votes, and that Labour supports this, it was argued that this issue might be the basis for a compromise of some sort. A customs union between the UK and the EU would not be sufficient to render the Northern Ireland backstop in the Withdrawal Treaty unnecessary because of the need for continued regulatory alignment with Single Market rules if border controls are to be avoided. Agreement on this issue alone would therefore be only a partial solution and Conservative opposition to anything that might restrict the UK’s ability to negotiate trade agreements with non-EU countries would be difficult in party terms for the Prime Minister.

Another politically significant obstacle to such an agreement between the Conservatives and Labour is that it would not, and could not, be binding on a new government following Theresa May’s departure or on a new Parliament following a general election.

## Indicative votes

In the Prime Minister's statement of 2 April she stated that if it was not possible for the Government and the Opposition to reach agreement on a joint proposal to put to Parliament, then "we would instead agree a number of options for the Future Relationship that we could put to the House in a series of votes to determine which course to pursue".<sup>9</sup>

The indicative votes held so far were the result of a backbench initiative and although they produced high levels of support for some options, including a customs union, a Norway-style relationship and the holding of a confirmatory referendum on the outcome of the UK's negotiations with the EU, no individual proposition commanded an outright majority. Any new indicative process led by the Government would need to overcome this problem.

Part of the difficulty with previous rounds of indicative votes was that although only the Cabinet officially abstained from voting, in practice many other Conservative MPs also did so. It might be necessary to offer a free vote, that is, one that is not whipped by party, to ensure the fullest participation by MPs.

## **EU approval process**

Should Parliament reach agreement there would still be a need for the European Council to approve any changes to the Political Declaration on the future relationship and for the European Parliament to agree to the Withdrawal Treaty. If the UK ratifies the Treaty before the new European Parliament meets for the first time on 2 July, then the existing parliament can be recalled in extraordinary session to ratify the agreement.

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