

Can Article 50 be extended? ^[1]



Article 50 of the Lisbon Treaty is the legal process for leaving the EU. It establishes the two-year negotiation period, after which the departing member state is no longer subject to the EU's treaties.

The UK [triggered Article 50](#) ^[2] on 29 March 2017 which means the UK will leave the EU at 11:00pm on 29 March 2019.

Who decides to extend Article 50? ^[3]

Currently, there are no plans for the UK to extend Article 50. The Government is opposed to an extension and the EU27 has made clear that the [best offer is already on the table](#) ^[4].

Extending Article 50 would require unanimous agreement in the European Council, the grouping of EU heads of state and government.

How long could Article 50 be extended? ^[5]

The length of any Article 50 extension would ultimately be determined through negotiation between the UK and the EU. It would depend on how much was left to do – whether it was just ratification or renegotiation – and the EU's willingness to overcome some of the big obstacles. In particular, it would have to factor in the European parliamentary timetable:

- May 2019: [European Parliament elections](#) ^[6]
- July 2019: new MEPs take their seats
- Autumn 2019: the new European Commission faces appointment hearings in the European Parliament.

As such, three time slots have been suggested: 18 April 2019, 19 April–July 2019, or beyond:

18 April 2019

If more time is needed simply for both sides to ratify the [Withdrawal Agreement](#) ^[7], the EU could agree to an extension up to 18 April 2019, to coincide with the last voting session of the current European Parliament. It would be relatively straightforward – technically at least – to find the extra three weeks, but would not give negotiators much time to reopen talks.

19 April – July 2019

Here there are two different scenarios:

If the UK Parliament adopts the Withdrawal Agreement before the end of the current European Parliament, but needs more time to pass [domestic legislation](#) ^[8], the EU27 could decide to extend Article 50 until the European Parliament elections on 23–26 May 2019. However, ratification by the European Parliament would have to wait until [new MEPs take up their seats in July](#) ^[9].

If more time is needed for negotiations, the EU27 could choose to extend Article 50 through to July 2019. This would give officials a little more leeway and delay ratification until the first sitting of the next European Parliament. Some member states may want to wrap up discussions and schedule ratification before appointment hearings for the new European Commission begin in the autumn.

Beyond July 2019

Extending the Article 50 period beyond July could prove more difficult.

Politically, the EU may only be willing to consider a longer extension for a general election or a [second referendum](#) ^[10]. Technically, it would be difficult to see how the UK could remain a member state without elected representatives sitting in the European Parliament. So far, there are no plans to elect new UK MEPs, but there may be ways round this. Any option would need the full support of EU member states.

If Article 50 were extended, how could the UK remain a member state without MEPs sitting in the European Parliament? ^[11]

Option 1: UK MEPs remain until the end of the Article 50 period

Current UK MEPs would continue to sit in the European Parliament until the end of the Article 50 period. However, in June 2018, the EU adopted a decision on how it would [reallocate the 73 UK seats in the European Parliament](#) ^[12]. It agreed to reduce [the total number of MEPs to 705 \(down from 751\) and to reallocate some UK seats among the EU27](#) ^[13]. The plan is

for this distribution to be effective from the next European Parliament.

Keeping all 73 UK MEPs would increase the total number of MEPs to 773, which could prove problematic. Of course, the EU could decide to postpone any reallocation until the UK has formally left the EU – but this decision would need to be made quickly. Candidates in each member state are already mobilising to fill in the revised number of seats.

Option 2: granting UK MEPs observer status

Others [9] have suggested that current UK MEPs could be granted ‘observer status’ in the new European Parliament, with no voting rights. However, it would also be slightly odd as, as a continuing member state, UK ministers would only be able to vote on EU legislation in the Council.

The EU27 would also need to agree to a final number of observers as well as a selection process. Current MEPs could stay on as observers or the UK Parliament could appoint its own members instead.

Option 3: appointing national representatives

Another option would be to appoint national representatives in lieu of MEPs until the end of the Article 50 period. This would closely resemble the process that Romania and Bulgaria followed when they joined the European Union in 2007.

Although Romania and Bulgaria joined on 1 January, they only held European Parliament elections in May. In the interim, they appointed national representatives, who had served as observers to the European Parliament from September 2005 to the end of the following year. In line with their accession treaty to the EU [14], the Romanian Parliament appointed a total of 35 observers from the governing and opposition parties; similarly, the Bulgarian Parliament appointed 18 observers. When they joined, the number of seats in the European Parliament increased from 682 to 785. Likewise, the UK Parliament could appoint members as national representatives to the European Parliament.

Option 4: elect new UK MEPs until end of Article 50 period

The UK would hold European Parliament elections this year, although not necessarily at the same time as the rest of the EU. This option would only make sense if there was an extended extension.

All of these options have disadvantages and much would depend on the likely length of an extension.

What happens to Article 50 if the UK calls a general election or second referendum? [15]

First, the UK would need to write to the EU asking for an extension of Article 50 – which would need to be agreed by all member states in the Council.

The Government would then need to legislate to change the EU Withdrawal Act which sets the date of the UK’s exit as 29 March 2019. This may need primary legislation – and would have to be done in the ‘wash-up’ session.

Could the UK seek multiple extensions? [16]

The Lisbon Treaty does not clarify whether a second extension might be possible. Presumably, it would require the consent of all member states.

Could the UK buy more time by revoking Article 50? [17]

A number of senior politicians such as former Prime Minister John Major [18] and Conservative MP Ken Clarke [19] have suggested that the UK could buy more time by unilaterally revoking Article 50 – this might also be a way of avoiding demands from member states reluctant to grant an extension.

Until December 2017, it was not clear whether the UK could end the Article 50 process. However, the European Court of Justice [20] (ECJ) has ruled that a member state could decide to revoke the Article 50 notification unilaterally.

However, the judgment made clear that the purpose of the extension should be to remain in the EU – not just to buy time. So revoking and then immediately retrigger Article 50 would not be possible. But it is hard to see how the ECJ could take action against a much more ambiguous revocation.

Update date:

Tuesday, January 15, 2019

Copyright 2019 Institute for Government | [Home](#) | [Privacy](#) | [Accessibility](#) | [Site map](#) | [Contact](#) | [Work for us](#)

The Institute is a company limited by guarantee registered in England and Wales No. 6480524 Registered Charity No. 1123926

Links

- [1] <https://www.instituteforgovernment.org.uk/explainers/article-50-options>
- [2] <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>
- [3] <http://twitter.com/intent/tweet?text=Who%20decides%20to%20extend%20Article%2050%3F>
- [4] <http://www.europarl.europa.eu/news/en/press-room/20181126IPR20156/brexit-the-time-has-come-to-back-the-withdrawal-deal>
- [5] <http://twitter.com/intent/tweet?text=How%20long%20could%20Article%2050%20be%20extended%3F>
- [6] <https://www.instituteforgovernment.org.uk/explainers/eu-member-state-elections-brexit-negotiations>
- [7] <https://www.instituteforgovernment.org.uk/explainers/draft-brexit-withdrawal-agreement-november>
- [8] <https://www.instituteforgovernment.org.uk/charts/parliamentary-progress-legislation-introduced-implement-brexit>
- [9] <https://constitution-unit.com/2018/09/20/could-article-50-be-extended-to-allow-for-a-second-brexit-referendum/>
- [10] <https://www.instituteforgovernment.org.uk/explainers/second-referendum-brexit>

- [11] [http://twitter.com/intent/tweet?
text=How%20could%20the%20UK%20remain%20a%20member%20state%20without%20MEPs%20sitting%20in%20the%20European%20Parliament%3F](http://twitter.com/intent/tweet?text=How%20could%20the%20UK%20remain%20a%20member%20state%20without%20MEPs%20sitting%20in%20the%20European%20Parliament%3F)
- [12] <http://data.consilium.europa.eu/doc/document/ST-7-2018-REV-1/en/pdf>
- [13] <http://www.europarl.europa.eu/news/en/headlines/eu-affairs/20180126STO94114/eu-elections-how-many-meps-will-each-country-get-in-2019>
- [14] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273249/6657.pdf
- [15] [http://twitter.com/intent/tweet?
text=What%20happens%20to%20Article%2050%20if%20the%20UK%20calls%20a%20general%20election%20or%20second%20referendum%3F](http://twitter.com/intent/tweet?text=What%20happens%20to%20Article%2050%20if%20the%20UK%20calls%20a%20general%20election%20or%20second%20referendum%3F)
- [16] <http://twitter.com/intent/tweet?text=Could%20the%20UK%20seek%20multiple%20extensions%20of%20Article%2050%3F>
- [17] [http://twitter.com/intent/tweet?
text=Could%20the%20UK%20buy%20more%20time%20for%20%23Brexit%20by%20revoking%20Article%2050%3F](http://twitter.com/intent/tweet?text=Could%20the%20UK%20buy%20more%20time%20for%20%23Brexit%20by%20revoking%20Article%2050%3F)
- [18] <https://www.thetimes.co.uk/article/major-let-s-take-time-out-and-revoke-article-50-g58p30v0x>
- [19] <https://www.bbc.co.uk/news/av/uk-politics-46800851/pmq-ken-clarke-and-theresa-may-on-brexit-and-article-50>
- [20] <https://www.instituteforgovernment.org.uk/explainers/ecj-ruling-article-50>