

Should the Government lose the ‘meaningful vote’ – what next?

January 2019

Authors: [Charles Balmain](#), [Oliver Brettle](#), [Dr. Henning Berger](#), [Chris Brennan](#), [Richard Eglin](#), [Genevra Forwood](#), [Cenzi Gargaro](#), [Jacquelyn MacLennan](#), [Stuart Willey](#), [Ingrid York](#)

The EU (Withdrawal) Act 2018 requires Parliament to pass a motion approving the withdrawal agreement and the framework for the future relationship between the UK and the EU. This so-called ‘meaningful vote’ was due to take place on 11 December 2018 but was called off by the Prime Minister the day before, in the face of likely defeat. It has now been confirmed that the vote will proceed on 15 January 2019 (with press reports suggesting that the Government will provide further reassurances on the controversial Irish backstop). But what happens if MPs fail to vote for the deal next week? We look at some of the options.

Seek to renegotiate the withdrawal agreement

The Government could seek to renegotiate the terms of the withdrawal agreement and return to Parliament for a further vote. However, the EU’s insistence to date – publicly at least – has been that it will not reopen the terms of the deal. The negative prospect of a hard Brexit both for the EU and the UK would potentially create some incentive for both sides to revisit aspects of the deal. However, the complexity of the issues involved – in particular the Irish border question – means that some delay of the current 29 March 2019 exit date would almost certainly be needed for this option to be realistic.

Extension of the 29 March 2019 deadline

Importantly, it is not possible for the UK Government unilaterally to extend the exit date. However, it could seek to negotiate an extension with the EU; Article 50 expressly allows for a postponement of withdrawal provided there is unanimous agreement by the remaining Member States. This option would allow further dialogue to take place and possibly a redefinition of the conditions for the UK’s exit from the EU, such as the operation of the Irish backstop. The EU’s agreement to any extension would turn upon many factors. In particular, the timing of elections for the European Parliament (on 26 May 2019) may limit the scope – politically – for the EU to agree to an extension. However, such political considerations may be outweighed by the negative consequences for the EU of a ‘no-deal’ Brexit, which will become increasingly acute and tangible as 29 March approaches.

Put the process in the hands of Parliament

On 4 December 2018, MPs approved an amendment, tabled by the former Attorney General Dominic Grieve MP, to the wording of the parliamentary motion dictating the procedure for the meaningful vote. The amendment gives MPs the power to instruct the Government what action to take in the event the meaningful vote is lost. However, the options Parliament could instruct the Government to pursue are likely to be limited to those already available to the Government, as outlined above.

Seek to avoid Brexit altogether

On 10 December 2018 – the day before the meaningful vote was first due to take place – the Court of Justice of the European Union (CJEU) ruled in Case C-621/18 Wightman v Secretary of State for Exiting the European Union that the UK can unilaterally withdraw notice of its intention to leave the EU under Article 50. The CJEU held that an Article 50 notification can be unilaterally revoked if (1) the revocation is made in writing to the European Council, (2) the revocation is clear and unequivocal, (3) no withdrawal agreement has entered into force and (4) the revocation is made in accordance with the Member State's constitutional requirements. The door is therefore open for the UK to reconsider its decision to exit the EU. However, the result of the 2016 referendum likely makes such a move politically impossible, absent a further referendum.

A second referendum

There are numerous difficulties associated with holding a second referendum – not least the thorny issue of what question(s) should be put on the ballot paper. Given the need for clarity on this, and in light of the uncertainty on the final withdrawal agreement deal on offer, it seems likely that a second referendum could – at most – either confirm the people's wish to leave the EU (without any real precision as to the terms or manner of departure) or mandate the UK Government to revoke Article 50.

Withdraw without an agreement

A 'no-deal' Brexit is strenuously opposed by business, and would have serious implications not just for the UK and the UK's relationship with the EU (and vice versa) but also the UK's relationships with third countries.

There also appears to be a majority in Parliament against a no-deal outcome. Efforts by various MPs to avoid a no-deal Brexit are increasing in number and urgency. Press reports suggest that over 200 MPs from across the political parties have signed a letter to the Prime Minister urging her to rule it out. On 8 January 2019, MPs backed a cross-party amendment to the Finance Bill, which would limit the scope for tax changes following a no-deal unless authorised by MPs. While the practical implications of the amendment are limited, the move arguably demonstrates the strength of opposition in the House of Commons to a no-deal Brexit. Further, on 9 January 2019 the House of Commons will debate an amendment which would force the Prime Minister to present a 'Plan B' within three sitting days of the vote being lost.

In the last few days before the re-run of the meaningful vote, the Government is outwardly still looking to secure Parliamentary consensus to the existing withdrawal agreement. That may yet prove possible. Should it not be, Parliament will surely want to do everything it can to avoid the negative economic, political and social consequences of a no-deal Brexit. In the circumstances, an extension of the 29 March 2019 deadline would represent a positive outcome at this stage of the process, at least in the short term. The fundamental questions around the UK's exit from the EU would still have to be resolved.

Meanwhile, certain Member States have started to prepare emergency legislation, aiming to provide for a grandfathering of certain rights for a transitional period in case of a no-deal Brexit. This could allow, for example, UK financial services firms to continue doing business for a limited period of time in such countries on the basis of their existing UK licences.

We are monitoring developments and will issue further alerts over the coming weeks.

White & Case LLP
5 Old Broad Street
London EC2N 1DW
United Kingdom

T +44 20 7532 1000

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.