



EU elections countdown #1

Brexit delay and the next European Parliament

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Ahead of the May 23–26 European Parliament elections, the EU is surrounded by internal and external challenges, its members increasingly divided on issues ranging from migration, digital taxation to EMU reforms, and Eurosceptic and anti-European groups are challenging the EU's integrity and credibility across the continent.

Our updated poll-based projections continue to show a loss of seats of centrist parties to anti-European and EU-sceptic groups in the next EP, even though these should still fall short of a veto power.

An extension of Article 50 could push the Brexit date close to or even beyond the European elections. Under EU treaties the UK would then be required to participate in the vote.

If the UK is still an EU member at the beginning of the 2019–2024 parliamentary term on July 2, the legitimacy of the new EP might be challenged if the UK refuses to hold elections. But even if it does (temporarily) send and later withdraw elected representatives, upcoming decisions such as the co-election of the next Commission President could be affected.

This could further fuel anti-European sentiment and strengthen populist groups that aim to discredit the EU and its institutions as dysfunctional and a threat to national sovereignty.

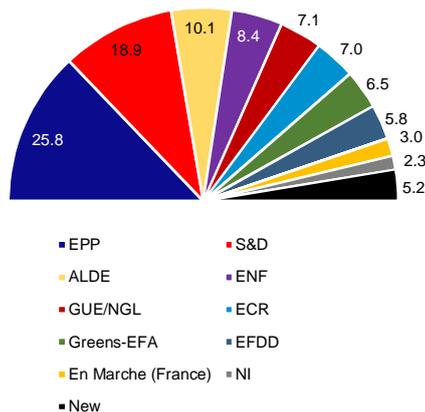
This prospect could bear risks for the unanimity required in the European Council for an extension of Article 50 beyond the EP election date.



Next EU parliament: Election notes and projections update

2019 EU Parliament potential share of seats (total 705)

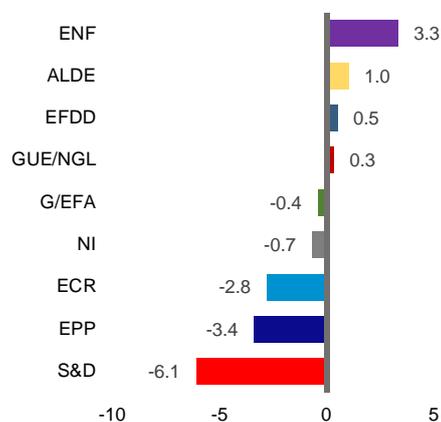
Share of seats (% of total)



Sources: Deutsche Bank Research est., based on PollofPolls.eu data, European Parliament

Potential wins and losses in the next EP

+/- share of seats compared to current EP, pp



Sources: Deutsche Bank Research est., based on PollofPolls.eu data, European Parliament

The countdown to the 2019 European elections is on. It is just above 100 days until voters will be called to the polls in the Netherlands on May 23, followed by Ireland and the Czech Republic a day later, and the rest of the EU until May 26.

As we have repeatedly written, the upcoming European elections are as important as ever. The Union is surrounded by internal and external challenges, its members increasingly divided on issues ranging from migration, digital taxation to EMU reforms, and Eurosceptic and anti-European groups are challenging the EU's integrity and credibility across the continent.

We will accompany the run-up to the May elections with a series of election notes, hoping to bring some clarity to a range of related issues such as EU-sceptical forces and the formation of groups in the European Parliament, the EP's role in electing the next Commission President and what key topics might drive voters when they hit the polls.

In this first note, we will look at a question which now seems to be on everyone's mind: what does an extension of Article 50 and delay of Brexit mean for the European elections: Would the UK still vote and (temporarily) send MEPs to the next EP? How would that contribute to the already mounting challenges seen for the EU's legislative body in the months ahead?

We will also provide a regular update on our poll-based electoral projections for the potential composition of the next European Parliament. In October, we projected a loss of centrist parties in the next EP to anti-European and Eurosceptic groups, based on national polls for EU27 members.¹

The broad picture in our updated projections remains the same: the traditional "grand coalition" of conservatives in the EPP and social democrats in the S&D is projected to lose its majority in the next EP. The biggest winner appears to be the far-right ENF while a joint "movement" of EU-sceptic groups and other anti-European parties could reach more than 1/4 of seats. Although still short of a veto power, it implies that a broader consensus across the centrist political groups will be required to achieve majority decisions in the next EP, in particular the co-decision with the Council on the next Commission President.

Brexit, Article 50 and the next European Parliament

DB's baseline remains that a crash Brexit will be avoided, even though risks of an accidental no-deal Brexit have increased. However, to avoid a crash Brexit, an extension of Article 50 is necessary as time for ratification of the Withdrawal Agreement and the accompanying implementation legislation in the UK and European Parliament before the March 29 deadline is running out. So far, no extension of Art.50 has been requested.

On January 29, the amendment from Labour MP Yvette Cooper for parliament to ask for an extension of Art.50 (and exert more control over the Brexit process) was rejected by just 23 votes. And the delay of a second vote on PM May's

¹ Körner, Kevin and Barbara Böttcher (2018). European Parliament elections 2019: The next "battle for Europe"? EU Monitor. Deutsche Bank Research.



Brexit deal in the House of Commons originally scheduled for this week until the end of February might be an indicator that an extension has become inevitable.

This could push the Brexit date close to or even beyond the May 23–26 European Parliament elections and inauguration of the next Parliament on July 2.

How can Article 50 be extended – and for how long?

Article 50 of the Treaty on European Union (TEU) foresees that two years after a country notifies the European Council about its intention to leave the Union, the treaties of the EU cease to apply to that country. This period ends for the UK on March 29. It can only be extended if all 27 heads of state in the European Council unanimously agree to do so.

The possible length of such an extension is not specified in the treaties and would thus need to be agreed on between EU27 members and the UK. In principle, the UK could therefore remain within the EU for just a few more weeks in April, during the May EU elections, or even beyond the first session of the next European Parliament on July 2. The length of an extension of Article 50 would therefore determine to what extent a delayed Brexit could interfere with the next European Parliament. This is likely to also influence EU27 members' willingness to accept such an extension.

If and for how long EU27 members would unanimously agree to extend Art.50 will also depend on the UK's underlying motivation to seek more time: is it to ensure ratification and implementation of the Withdrawal Agreement, to call new general elections in the UK or even a second referendum? Or is it merely to win time and to avoid a crash Brexit by forcing concessions from the EU despite the message that the Withdrawal Agreement is not open for negotiation?

Is revocation of Article 50 a valid alternative to gain more time?

In principle yes, but in practice rather no.

Yes, as the European Court of Justice (ECJ) clarified in December that the UK could revoke its intention to leave the EU unilaterally (i.e., no agreement in the Council needed) before the March 29 (or an extended) deadline.²

No, because revocation would not just extend the withdrawal period but stops the withdrawal process altogether, i.e., confirms the UK's EU membership. The ECJ outlined in the respective "Wightman case" that revocation of Article 50 should be unequivocal, unconditional and indicated that it is not a tool to buy additional time. There is good reason to believe that otherwise, at least in theory, the revocation could be challenged.

However, in practice, there is probably little that could be done by the ECJ, if the UK decided to use revocation of Article 50 as an "emergency option" to avoid a crash Brexit and (re-)trigger Article 50 again at a later time. But the prospect of severe damage to the relations with the rest of the EU might still prevent such a radical step. According to the ECJ, revocation must also "be decided following a democratic process in accordance with national constitutional requirements", which could further disqualify it as a last minute instrument.

² ECJ (December 2018). The United Kingdom is free to revoke unilaterally the notification of its intention to withdraw from the EU.



What does a short “technical extension” of Art.50 imply for the EU elections?

A “technical extension” of Article 50 for only a few weeks beyond March 29 but sufficiently before the May 23–26 European elections would be a non-event from a European Parliament perspective and not differ much from the procedures if the March deadline is met.

If Article 50 is extended and the UK leaves the EU before the May elections, these will be held as planned only in the remaining 27 members. No British MEPs would be voted into the next EP and the number of MEPs would be reduced as foreseen from currently 751 to 705, whereby 27 of the 73 British seats are to be reallocated between members and 46 reserved for future EU enlargement.

However, the question remains of what could be achieved through such a short extension. The idea would be merely to use this time to achieve ratification of the Withdrawal Agreement in the British and European Parliament as well as of the required implementation bill in the British parliament.

The last plenary session of the outgoing European Parliament is on April 18, thus only three weeks after the March Brexit deadline and more than a month before the May EP elections. If a vote later than April 18 was required, this would bring us already to the inaugural session of the new European Parliament of July 2 – unless the President of the EP convenes the parliament beforehand “on an exceptional basis” either at the request of the EP majority, Commission or Council.³

What is clear is that a few weeks extra time before the May European elections may not be sufficient to organize a new general election in the UK and certainly not a second referendum. A few weeks might not even be enough for the ratification of the Withdrawal Agreement Implementation Bill on the British side. Ratification of the Withdrawal Agreement through the European Parliament should not be affected substantially by a delay beyond the May elections and inauguration of the new EP (notwithstanding UK participation) though. The strengthening of anti-European populists and changes in the parliament’s composition are projected to be insufficient to become a major obstacle for the agreement to pass the EP.

Does the UK need to hold EU elections if Art.50 is extended further?

If it is agreed that the UK needs more time, either for ratification, new elections or a second referendum, a delayed Brexit could overlap with the May 23–26 elections or even the inauguration of the new EP on July 2.

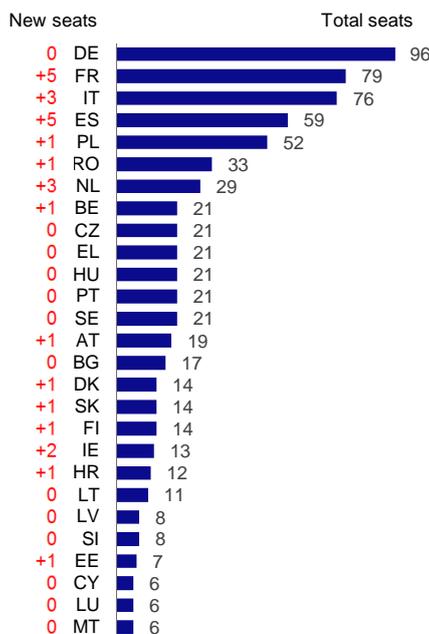
The debate has intensified over the last weeks whether this would mean that the UK has to participate in the European elections even while planning to leave the Union shortly after. Various solutions have been offered to avoid such a scenario even though their compatibility with the EU treaties have been questioned by others. Even between European institutions, the question of what is required for the legality of the next European Parliament seems not to be finally settled.

According to the EU treaties, all EU members are generally obliged to participate in the elections to the European Parliament. Thus, in the case that the UK is still an EU member at the time of the European elections and the beginning of the next parliamentary term, this would apply to the UK as well.

³ Rules of Procedure of the European Parliament (July 2018). Rule 146: Convening of Parliament.

Planned reallocation of 27 seats in the next EP

3



Source: European Parliament



Spokesperson of the European Commission Maragritis Schinis recently emphasized this in a news briefing: “We have a legally composed European Parliament which requires directly elected MEPs from all member states at the latest on the first day of the new term of the new parliament, which this time is the second of July.”⁴

An extension of Art.50 beyond the July 2 inauguration of the next EP without European elections in the UK and without elected British representatives in the next EP could cause severe damage to the legitimacy of the parliament. Without elections held in the UK, the overall results (and thus the legality of the next EP and its decisions) would probably not only be legally challenged before the ECJ by British citizens (and other EU citizens registered in the UK that in this case could not vote and would thus go unrepresented); it could also boost anti-European forces seeking to discredit the EU and its institutions as dysfunctional and in conflict with national sovereignty.

(How) could a UK participation in the vote be avoided?

Some have argued that the critical date for an extension of Art.50 should not be the elections in May but the inauguration of the new parliament on July 2. Accordingly, the Brexit deadline could be extended until then without requiring the UK to participate in the elections. This could for example be applied if a Withdrawal Agreement has been ratified already at the time of the elections on the British side and only their ratification of the Withdrawal Agreement Implementation Bill is still due.

However, this would not solve the issue that the UK remains a full member of the EU – and therefore falls under the EU treaties – until the last day before the extended deadline. This has also been emphasized by the ECJ's December ruling (see above). British citizens and EU citizens in the UK could still claim that their voting rights have been violated. In addition, also the ratification of the Withdrawal Agreement Implementation Bill could face hurdles in the British Parliament. And there is no guarantee that the UK will eventually leave as long as it is still part of the EU as it could revoke Art.50 until the last day of the deadline.⁵

Another proposal to avoid the UK's participation in EP elections shortly before the UK leaves the Union has been formulated by British MEP (Labour) Richard Corbett, who suggested to temporarily send elected members of the British Parliament as representatives instead, referring to the procedure that has been applied for new countries joining the EU (e.g. Romania and Bulgaria in 2007).⁶ However, this exemption was based on these countries' accession treaties while no such exemption is foreseen under Article 50. That means that universal suffrage for all EU citizens as written in the EU treaties would still be violated at the time of the election. The same would apply if current British MEPs remained in the next Parliament until the extended Art.50 deadline.

To apply for an exemption to allow the UK to temporarily send MPs or current MEPs as representatives, a treaty revision might therefore be necessary. But even if this was feasible on such a short notice, treaty changes might overstretch what EU members find acceptable. Some could fear that this could contribute to an erosion of the Union's joint legal basis, and that it could tempt other members to push for reopening other aspects of the treaties as well.

⁴ Reuters (January 2019). EU says Britain must hold European elections if no Brexit before July 2.

⁵ See also Mayer, Franz (February 2019). Collateral Damage? Der Brexit und das Europaparlament. verfassungsblog.de.

⁶ Centre for European Reform (February 2019). Can the UK extend the Brexit deadline?



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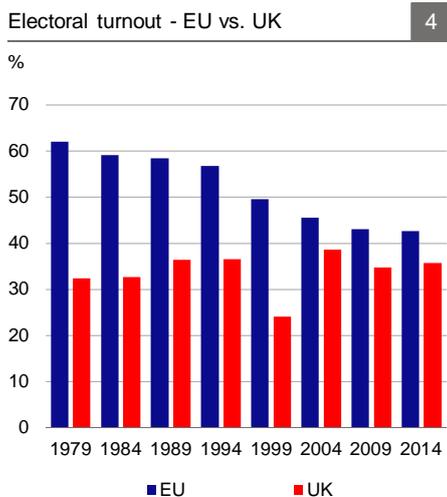
Others suggest that a protocol annexed to the treaties such as the amendment to Article 136 that allowed for the establishment of the European Stability Mechanism could do the job. But as pointed out by Agata Gostyńska-Jakubowska from the Centre for European Reform, the ratification of this modification took two years, hardly a template for solving the Brexit-EU-elections conundrum.⁷

One rather unconventional way out of this dilemma might be found in a legal opinion of the legal service of the European parliament from 2017. The legal service confirmed that according to the treaties the UK has the duty to conduct elections. However, it also suggested that "the possibility for the European Parliament to be validly constituted following the 2019 elections would not be affected by a potential failure by the UK to organise elections".⁸ So according to them, the UK could breach the treaties by not holding elections and at the same time the European Parliament still be legal. However, it is hardly conceivable that European leaders would agree to an extension of Art.50 that is prone to lead towards a "solution" of the election conundrum that violates the treaties.

So what happens, if the UK does take part in the EP elections?

The European Council decided last June that in the event the UK is still a member of the EU at the beginning of the 2019–2024 parliamentary term, the number of representatives in the EP per member country will remain fixed at the current level until the UK's withdrawal becomes legally effective. After that, the foreseen reduction and reallocation of 27 seats among members would take place based on the May electoral results and parties' lists of candidates. The UK would therefore temporarily send 73 elected MEPs out of 751 to the European Parliament. Once the UK leaves the EU, the number of seats will be reduced to 705. However, this procedure would require member states like France, Italy or Spain (which together will gain 13 of the 27 reallocated seats) to put the election of these additional MEPs on hold.

If the UK does conduct elections shortly before leaving the Union, one could expect a turnout that falls below the already historically low results over the previous decades. A new "Brexit Party" supported by Nigel Farage, the former UKIP leader, already formally registered with the electoral regulator and might benefit from frustration amongst the British electorate about the extended Brexit process (Reuters, February 2019).⁹ "Mock candidates" might further add to discrediting the elections and the next European Parliament. And depending on how long Art.50 would be extended, this could also impact the election of the next Commission President and appointment of the Commission (which could temporarily even include a British Commissioner). To avoid such an overlap, the European Council (in consultation with the Parliament) might decide to delay the election of the next Commission President for a few weeks to the time after the postponed Brexit. If the UK eventually withdraws from the EU, its MEPs would leave the EP as well, leading to the planned reallocation of seats among member countries and possibly reshuffling between groups in the EP.



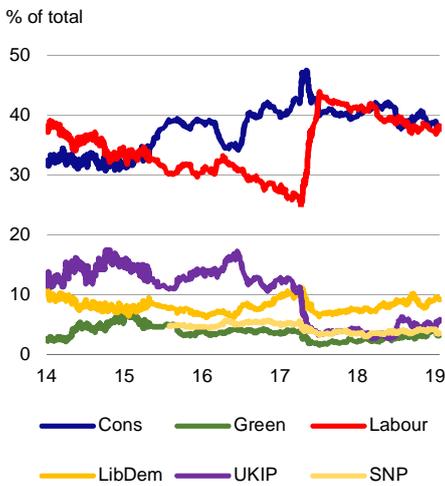
Note: 1979: EU9, 1984: EU10, 1989/94: EU12, 1999: EU15, 2004: EU25, 2009: EU27, 2014: EU28
Sources: TNS/Scyt, European Parliament

⁷ Centre for European Reform (February 2019). Can the UK extend the Brexit deadline?
⁸ Euractiv (January 2019). Will UK hold EU elections if Article 50 is extended? EU institutions differ.
⁹ Reuters (February 2019). Farage ready to be new 'Brexit Party' candidate if EU exit delayed.



How would the UK impact the balance in the next EU parliament?

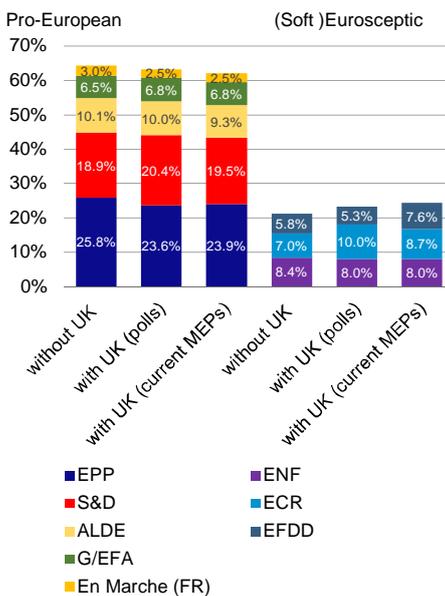
UK polls for the House of Commons 5



Note: Moving average over last 10 polls

Sources: PollofPolls.eu, nat. polls, Deutsche Bank

Potential composition of the next EP - with/without the UK 6



Note: this chart does not depict all groups represented in the EP; GUE/NGL and non-aligned parties are not included as the allocation is not clear cut.

without UK: 705 seats, reallocation of 27 seats among members

with UK: 751 seats, current allocation among members; polls: UK projections based on current national polls; current: UK projections equal current seat allocation in the EP. UKIP in 2014 joined EFDD but is now split between EFDD, ENF and non-attached. For current polls, we aligned UKIP together with party leader Gerard Batten with ENF.

Sources: Deutsche Bank Research est., based on PollofPolls.eu data, European Parliament

This is a difficult even though not (any longer) entirely hypothetical question. Our projections for the 2019 post-Brexit European elections are based on domestic polls for 27 member countries. National political preferences cannot be assumed to match 1:1 parliamentary elections on the European level (and other factors such as election turnout also play a role), even though back testing of polls on the 2014 election results show a high matching.

However, the quality of current domestic polls for the UK in predicting European elections can be questioned. For example, the support for UKIP in domestic polls dropped dramatically after the 2016 Brexit referendum as the party's main goal had been achieved. It seems reasonable to assume that voters' support for UKIP (or a comparable party) would be pushed strongly if European elections were to be announced in the UK.

We nevertheless show some projections for the composition of the next European Parliament assuming that the UK would take part in the May elections. Following the Council decision for this event, we leave the number of representatives per member state unchanged from the current parliament. We further present two cases: one based on current domestic polls for the UK and one in which the allocation of UK's seats among political groups in EP remains fixed to the current parliament.¹⁰

In both cases, the impact on the composition of the European Parliament would be visible but limited (see Chart 5). The conservative ECR would benefit from the inclusion of the Tories (the group's current largest member), S&D from Labour's strong standing compared to European peers and the anti-European and Eurosceptic EFDD and ENF from the inclusion UKIP or an equivalent party, depending on which groups in the EP these parties would join (if at all). The share of EU-sceptic groups, including ECR, would increase by 2–3 percentage points but still leave the weight in the EP with centrist parties.

A more profound impact might be observed regarding group formation in the next EP, for which 25 MEPs are needed that represent a quarter of member countries (i.e. currently 7). For both EFDD and ENF the country requirement could become an issue (even though they might be joined by new parties or join forces). British MEPs from UKIP, if it reenters the EP, or an equivalent party could here (temporarily) make the difference.

What is the EU's view on an extension of the Brexit deadline?

There is no straightforward answer on how to avoid a longer extension of Art.50 clashing with the upcoming EP elections. EU institutions and leaders repeatedly showed their strong interest in avoiding a crash Brexit and in an orderly withdrawal on the basis of an agreement and declaration on the future relationship. And even though rising frustration in European capitals becomes more and more visible, the preference for a cordial separation remains clear.

One can therefore expect a high degree of good will and pragmatism on the EU side regarding a possible extension of Article 50 in order to give more time for ratification. The same should apply, in principle, if the UK would decide that new elections or a second referendum would be required.

¹⁰ In the 2014 European Parliament elections, UKIP gained 27% of the British votes, followed by Labour with 25% and the Conservatives with 23%. UKIP's 24 out of the UK's total 73 MEPs joined EFDD in the EP but later split between EFDD, ENF, and non-attached members after Nigel Farage resigned from the party in 2018; more than half of former UKIP MEPs now listed as independents. Labour (20 seats) belongs to the EP's S&D group, the Conservatives (18 seats) to ECR.



As German Chancellor Merkel said a few days ago, difficult questions regarding Brexit should be resolved with creativity, hinting at the largest European economy's willingness to compromise.¹¹ However, it is not up to Germany or a few close EU allies alone, to decide on matters such as the extension of Art.50. It will be the EU27 as a whole that needs to agree, which increases the complexity of such a decision exponentially.

For some members, an extension of Art.50 beyond the European elections might come at a price that they are not easily willing to pay. At a time when Europe finds itself surrounded by heightened internal and external tensions and as European leaders face rising populism at home, the risks of an accidental crash Brexit have to be weighed carefully against the risk of potentially severe legal, reputational and functional damage to the European elections and legislative body.

Guy Verhofstadt, the EU parliament's chief Brexit representative outright rejected that the EU should accept this risk: "what we will not let happen, deal or no deal, is that the mess in British politics is again imported into European politics. While we understand the UK could need more time, for us it is unthinkable that Article 50 is prolonged beyond the European elections."¹²

EU members will consider these risks when asked to agree to an extension of Article 50 that goes beyond the European elections. Some might conclude that the risks both at home and to the EU's institutions are not worth taking and express a preference for a clear separation even if that means a disorderly Brexit. As only one member out of 27 is needed to reject an extension, the chances of that happening are non-negligible.

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¹¹ Euractiv (February 2019). Merkel drops hint of a 'creative' Brexit Irish backstop compromise.

¹² Guy Verhofstadt on Twitter (16 January 2019).



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