

Stopping the clock: can we buy more time to figure out Brexit?

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The UK is running out of time before it leaves the EU.

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A General Election will take at least a month, and any new government would clearly want to renegotiate the exit deal. Alternatively, a second referendum would take months to organise – and planning for a no-deal outcome only began in earnest at the end of 2018.

Either way, with the clock still ticking down to 29 March, the UK needs to buy more time.

There are two main options. Either Britain can unilaterally revoke its original Article 50 notice, or it can request an extension.

Both options are fraught with legal and political difficulties.

Let's start with the latter. Under Article 50, an extension can be granted with the unanimous agreement of EU member states.

That is only likely to happen in order to help clarify the UK's position on Brexit, by making time for a second referendum or General Election. It would not be agreed to allow further negotiation of the Irish border arrangements, which EU leaders have already said is not an option.

Any extension would also have to be short. There are European parliamentary elections in May 2019, making a longer extension politically, legally, and practically messy.

As for revoking Article 50 altogether, back in December the European Court of Justice (ECJ) ruled that this is a possibility, and would not require the consent of other EU states. This would allow the UK to remain in the EU on its existing terms.

According to the ECJ, however, the revocation must be "unequivocal and unconditional", and follow a decision made in accordance with the UK's domestic constitutional requirements. While this is ambiguous, at the very least it is likely to require an Act of Parliament or the public's consent in a second referendum.

That's the position on the EU side, but what of UK law? With chaos in Westminster and little chance of getting a parliamentary majority for anything, the government has limited options.

There is good legal argument that the government could seek an extension without the approval of parliament. The 2017 Notification Act which empowered Theresa May to trigger Article 50 in the first place does not preclude an extension.

However, revoking the Article 50 notice is a different matter. The 2018 Withdrawal Act contains many provisions designed to actually implement Brexit and which would be redundant if the withdrawal process ended.

Without authorisation by a new Act of Parliament, revoking the withdrawal notice is likely to breach the restriction on the use of executive power.

The government has been using the tight deadline to put pressure on MPs to support May's position, so would only move the Brexit date as a last resort. In these circumstances, an extension is more likely, because revocation would be so politically explosive.

Furthermore, whatever the legalities, the weakened government will want to seek maximum political support. It may well try to get the approval of parliament, either in a motion or further legislation, before it seeks agreement from the EU.

Ultimately, either option requires the UK to be decisive. Getting EU agreement to extend the Article 50 period will require another public vote, whether an election or referendum, to resolve the current leadership vacuum. And revoking it entirely can only follow a legitimate and constitutionally sound decision.

Of the two, an extension is more likely, but even that will require the kind of clear decision-making from politicians not seen since Article 50 was triggered.

And still, the clock is ticking.

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