**The extension of the Article 50 process and the European Parliament elections**

**The purpose of this note is to structure any discussion on the extension of the Article 50 process.**

The choice for Heads of State or Government is **binary:**

1. A **short technical extension until 23 May 2019.** In this scenario, the United Kingdom will not organise elections to the European Parliament and the new seat distribution (which gives 14 Member States additional seats), agreed by the European Council in June 2018, will apply; or
2. A **long extension beyond 23 May 2019** (at least until end 2019). In this scenario, the United Kingdom is obliged to organise elections to the European Parliament between 23 and 26 May and the current seat distribution (decided in 2013) will continue to apply. Such a long extension could last until 31 December 2019 or beyond, on the understanding that the period could be shortened should a solution be found before it expires.

Any other option (as for example an extension until 30 June 2019) would entail serious legal and political risks for the European Union and would import some of the current uncertainties in the United Kingdom into the EU27. Any other scenario would also have direct legal and practical consequences for the election of Members to the European Parliament in 14 of our Member States.

Finally, under all circumstances and regardless of whether option 1 or 2 is chosen, the European Council should envisage a **single extension**, rather than a series of extensions, which would keep the European Union in limbo for an extended period of time.

***The impact of an extension on the European Parliament elections***

A decision enabling the United Kingdom to remain a Member State until 30 June without requiring it to organise European Parliament elections between 23 and 26 May would leave the European Union exposed to uncertainty from which it could shield itself. Consider the following scenarios, in which the United Kingdom would be in good faith:

* *The United Kingdom parliament approves the Withdrawal Agreement and the European Council grants the United Kingdom an extension until 30 June. However, the House of Commons fails to ratify the Agreement in mid-June. In this scenario, the United Kingdom may ask for a second, longer extension, but will no longer have the time to organise elections to the European Parliament.*
* *The United Kingdom parliament approves the Withdrawal Agreement and the European Council grants the United Kingdom an extension until 30 June. However, the House of Commons fails to ratify the Agreement at the end of May. In this scenario, the United Kingdom may ask for a second, longer extension, and will organise elections to the European Parliament in the course of June. The 14 Member States with additional Member of the European Parliament will lose those places until the United Kingdom withdraws from the European Union.*
* *The United Kingdom’s parliament approves the Withdrawal Agreement and the European Council grants the United Kingdom a technical extension until 30 June. However, the domestic situation becomes such that the United Kingdom decides to revoke the Article 50-notification, for example on 15 June. The United Kingdom would then be a full Member of the European Union, without having organised elections to the European Parliament and without having the time to do so*.

The failure to organise European Parliament elections in the United Kingdom could make the formal constitution of the new European parliament illegal and this illegality would infect all its subsequent decisions, including the appointment of the new European Commission or our future EU budget. Every decision would be open to legal challenge.

Moreover, a failure to organise elections in the United Kingdom could lead to legal proceedings from citizens – United Kingdom citizens but also other EU citizens, resident in the United Kingdom – who would be denied their legal right to vote.

A change of policy in the United Kingdom – a phenomenon with which we have become familiar over the past months – could lead to a late election in the United Kingdom and persons validly elected in 14 Member States not taking up their positions. The party political consequences in the Member States concerned are unpredictable. In turn, this would create uncertainty as to the balance and majorities in the European Parliament.

***The impact on the elections to the European Parliament in the EU27***

Article 14(3) of the Treaty on European Union states that “*The Members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot*”.

The composition of the European Parliament following the United Kingdom’s withdrawal is set out in a European Council Decision of 28 June 2018. This Decision attributes additional parliamentary seats to 14 EU27 Member States (Denmark, Estonia, Ireland, Spain, France, Croatia, Italy, Netherlands, Austria, Poland, Romania, Slovakia, Finland, Sweden).

This means that if the United Kingdom does not organise the elections between 23 and 26 May 2019, but does so subsequently, the EU27 Member States that obtained additional parliamentary seats and that will have elected people for these seats would have to decide how to reduce their number.

It should also be underlined that given the Member States’ need to organise their elections in practice, finalise the list of candidates and print ballots, these 14 Member States would need to know at the **latest by mid-end April** what the United Kingdom will do.

Any alternative way of electing members of Parliament from the United Kingdom – for example letting the current Members continue their mandates, or selecting representatives from the national parliament – **would require a Treaty change**. This is not at all realistic.

***Conclusion***

**For the foregoing reasons, any extension offered to the United Kingdom should either last until 23 May 2019 or should be significantly longer and require European elections. This is the only way of protecting the functioning of the EU institutions and their ability to take decisions.**

The United Kingdom, in a spirit of loyal cooperation, should in particular have to commit itself to constructive abstention on issues such as decisions on the future leadership of the EU institutions and the negotiation of the Multiannual Financial Framework.

One condition must be particularly clearly formulated in the case of any extension: the additional time cannot be used for re-negotiating the Withdrawal Agreement. The package is now closed.

The additional time granted is there to help solving the internal ratification problems within the UK, if needed with additional ambition added to the text of the Political Declaration provided that this helps to ensure cross-party support in the UK.