

**Two Weeks to Brexit**  
**A Special Report to The Omelas Institute**

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Alexander Fraser Kumar FRSA  
&  
Adam John Ellison

*The Authors decided to forego proofreading in order to finish and publish this time-sensitive piece as quickly as possible. Please forgive any errata.*

## **1 Introduction**

Tonight, on 13 March 2019, with just over two weeks left until the 29 March deadline, MPs voted by a majority of 43 to reject the idea of a no-deal Brexit. This comes after the second landslide defeat of the Prime Minister's deal the night before, and months of total Brexit uncertainty. Little, if any, uncertainty has tonight been dispelled, as the rejection of a no-deal Brexit has no binding and does not change the fact that crashing out without a deal remains the only eventuality if Parliament fails to agree another deal, and fails to agree to extend or to revoke Article 50.

It is our position that the Government should seek the extension of Article 50 in order to conduct a legally binding referendum on the terms of Britain's Exit from the European Union in order to ensure that a No Deal exit does not take place and to provide both certainty and a democratic mandate to the future of the United Kingdom.

## **2 Undesirable Outcomes**

### **2.1 No Deal**

No Deal is and always has been the default outcome of Article 50 come 29 March. Despite a British Parliamentary vote narrowly approving a motion stating that "That this House declines to approve leaving the European Union without a Withdrawal Agreement", unless a deal is agreed upon or Article 50 is extended or revoked, a No Deal Exit will occur. No is not enough: positive steps have to be taken to stop this eventuality from coming to pass. For reasons exhaustively listed elsewhere, a No Deal departure from the European Union should be avoided at almost any cost.

### **2.2 A Negotiated Deal by March 29th**

Within the leadership of the Conservative and Labour parties, there remains a consensus that a deal should be reached before Britain's Exit from the European Union. At present, only one deal is immediately available for British approval: the Withdrawal Agreement negotiated by the Conservative Government of Prime Minister Theresa May. Whilst it must be remembered that such an Agreement is only a temporary agreement to tide the United Kingdom over until a full deal for complete withdrawal can be negotiated, European Council President Michel Barnier has been consistent in his insistence that the present Withdrawal Agreement is the only legal basis for a

managed British exit from the European Union.<sup>1</sup> Therefore, for any permanent Brexit Deal to be implemented without Article 50 withdrawal or extension, it is a prerequisite that the Withdrawal Agreement be ratified by Parliament in the coming week - this seems exceptionally unlikely and therefore a negotiated deal cannot be relied upon as a realistic, safe option.

### ***2.3 A Snap Election***

The resignation of the Government and calling of a General Election, whilst remaining a solution in the long term should an extension or revocation of Article 50 have occurred, in no way solves the immediate crisis. The Fixed Term Parliaments Act 2011 dictates that, should the Government vote to call a snap election, *'The Parliament then in existence dissolves at the beginning of the 17th working day before the polling day'*,<sup>2</sup> thereby a snap election constitutionally requires a bare minimum of 17 days to complete. Even should an election be called immediately, and a government formed rapidly in its wake, there is simply not enough time for any Prime Minister to be appointed before March 29th and the resultant No Deal Exit from the European Union. Article 50 would have to be revoked or extended before the dissolution of parliament to ensure the calling of a General Election would not entail No Deal. Such a sequence of events in quick succession in the current context would place a heavy burden on Britain's political institutions and plunge the United Kingdom even deeper into political uncertainty and even constitutional instability.

## ***3 The Desirable Outcome***

### ***3.1 A Binding Referendum***

At this late stage, delaying the departure date remains a necessary precondition to any desirable outcome. Chief among these is that of the much-anticipated Second Referendum. The Labour Party has flirted with this idea, but has remained non-committal - indeed, in today's *Guardian*, Anna Soubry argued that the route to a second referendum requires a rebellion of both major parties against their leaderships.<sup>3</sup> This is difficult to foresee, but it is not an impossibility, especially among the chaos that awaits Westminster during the fortnight we have left between now and the deadline as it stands. There would be a strong temptation for a simple binary choice referendum, though it is unclear what the Leave option would be, assuming the other option would be to Remain. A multiple-choice referendum has multiple benefits when compared to a binary one however: first, it immediately resolves the issue of what the Leave position would be - rather than Parliament selecting May's Deal, No Deal, EFTA Membership or some other option, this choice is left open to the public.

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<sup>1</sup> <https://www.timesofmalta.com/articles/view/20190312/world/no-brexit-transition-period-without-withdrawal-agreement-eus-barnier.704332>

<sup>2</sup> [http://www.legislation.gov.uk/ukpga/2011/14/pdfs/ukpga\\_20110014\\_en.pdf](http://www.legislation.gov.uk/ukpga/2011/14/pdfs/ukpga_20110014_en.pdf) p. 2

<sup>3</sup> <https://www.theguardian.com/commentisfree/2019/mar/13/brexit-second-referendum-theresa-may-jeremy-corbyn-independent-group>

A second referendum resolves various issues which have emerged in the aftermath of the first. There has been a great deal of division over just what the initial vote to leave entailed and the various interpretations of it by parliamentarians - some concluding that the public voted for No Deal, others that the public voted for a Customs Union with the EU - can be easily resolved by asking the public to approve the course of British exit from the EU. A Second Referendum would also give the option to end debate over whether or not the British people have “changed their minds”. The process of Brexit itself, along with other political developments since June 2016, has provided voters with a great deal of new information which not only changes the situation surrounding Brexit but in fact greatly expands the public understanding of what Brexit entails. A second referendum, so long as it is not a simple repeat of 2016, does not override the initial decision but builds on it, allowing voters to clarify their initial position by specifying exactly how they wish to Exit the European Union and by confirming that, now that the precise options and implications of such an exit are more clear, they still wish to do so.

The approach we would advocate is that said referendum be conducted in one of two manners. The first of these is via a two-stage referendum asking voters the same question asked in 2016, “*Should the United Kingdom Leave the European Union?*” and then a second question asking “*If the United Kingdom does Leave the European Union, on what terms should it do so?*” The other option is a single stage referendum asking voters to rank their preferences between the four proposed options (Remain, No Deal, EFTA Membership, Withdrawal Agreement) could be implemented.

It is arguable which system is more understandable and democratic. The first retains the Leave/Remain binary that voters are familiar with, though arguably a direct repeat of the first referendum risks greater controversy. Meanwhile the instant run-off with four available options may appear more complex, it allows for a singular question to be put to the voters and for all four outcomes to be compared directly.

Ensuring legitimacy in any second referendum is essential, meaning that any such vote must not be seen as a) a “stitch-up” for either Remain or the Government’s Withdrawal Agreement and b) a simple repeat of the first referendum.

Suggested terms of a second referendum:

*Either*

A single stage, ranked choice referendum with four options:

- a) Remain in the European Union
- b) Leave the European Union with No Deal
- c) Leave the European Union on the terms of the Withdrawal Agreement
- d) Leave the European Union and immediately enter the European Free Trade Agreement

*Or*

(1) Should the United Kingdom:

- a) Remain in the European Union
- b) Leave the European Union

*Followed by, if Leave wins:*

(2) Should the United Kingdom leave the European Union:

- a) With No Deal
- b) On the Withdrawal Agreement negotiated by the Government
- c) On the basis of entry into the European Free Trade Area (IE the “Norway” Option)

Thereby a simple, binary question is put to the public and then voters are given the opportunity to select the terms of Brexit they most desire.

Whilst including the “Norway Option” of EFTA membership is desirable so as to give greater choice and expand the present debate, it is possible that the European Union and/or EFTA would not approve British EFTA membership. If the British government is unable to secure this as an option, then we recommend that the referenda go ahead as planned merely without EFTA membership as an option.

### ***3.2 The Legality of Delaying Brexit***

The Prime Minister will tomorrow move that Parliament should delay Brexit until 30 June if MPs back a deal by 20 March. However, legal advice to the German Bundestag suggests the Government could face legal action for depriving citizens of the right to vote in the European Parliament elections at the end of May.<sup>4</sup>

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<sup>4</sup> Fiona Pearson, ‘Delaying Brexit could be illegal’. <https://www.michelmores.com/news-views/news/delaying-brexit-could-be-illegal>

Whilst an extension of Article 50 for three weeks - putting the date of exit at 18 April and coinciding with the final voting session of the sitting European Parliament - would avoid the implications of such a legal challenge, this simply leaves the United Kingdom with five weeks between now and the date of exit, rather than two, and likely does not provide adequate time either for a new policy consensus to emerge within the UK or for a new deal to be negotiated between the UK and EU.

### ***3.3 Potential for Veto from EU 27***

Beyond the immediate legal difficulties surrounding the extension of Article 50 as well as the domestic political concerns surrounding such a move, any extension relies on the unanimous approval of the EU 27 as manifested in the European Council. Such a move has received outright support from German Chancellor Angela Merkel,<sup>5</sup> and conditional support from French President Macron, with a potential extension lasting as long as 21 months. This tacit support, however, relies on the proviso of the United Kingdom laying out specific objectives for the extension, as Guy Verhofstadt today told the European Parliament.<sup>6</sup> Barring such objectives, President Macron has made it clear that France would veto an extension - a threat also extended by Spanish Prime Minister Pedro Sanchez.<sup>7</sup> President Macron has insisted that Britain must make a 'new choice' in order to secure French support for any extension;<sup>8</sup> whilst the French President made no suggestion what this new choice might be, it is clear that a second referendum would fulfill this demand.

More worryingly, Eurosceptic leaders within the UK and the EU27 pose a direct threat to any such extension. Nigel Farage, amongst others, has actively lobbied Italian leaders to veto any extension. In addition, Polish Senator and Plenipotentiary for International Dialogue Anna Maria Anders made clear her own opposition to Article 50 extension following a meeting with former Conservative leader Iain Duncan Smith and a pair of Conservative MPs.<sup>9</sup> Whilst no direct promises of a veto have yet been made by a head of state, the threat remains that either the British government could fail to meet Franco-German demands for an extension of Article 50 and thus face widespread opposition to any extension and/or could be faced with an outright veto from either Italian Prime Minister Giuseppe Conte - under at least some influence from his Deputy Matteo Salvini - or Polish Prime Minister Mateusz Morawiecki.

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<sup>5</sup> <https://www.theguardian.com/politics/2019/mar/13/angela-merkel-said-it-would-be-easy-to-get-eu-to-extend-article-50>

<sup>6</sup> <https://uk.reuters.com/article/uk-britain-eu-verhofstadt/eu-lawmaker-verhofstadt-warns-against-brexit-extension-idUKKBN1QU18U>

<sup>7</sup> <https://www.independent.co.uk/news/uk/politics/brexit-article-50-extend-macron-merkel-theresa-may-france-germany-eu-talks-a8799506.html>

<sup>8</sup> <https://www.politico.eu/article/macron-we-need-a-clear-reason-to-grant-brexit-extension/>

<sup>9</sup> <https://www.theguardian.com/politics/2019/mar/13/brexiters-lobby-for-european-veto-of-article-50-extension>

Despite the lobbying of British Eurosceptics however, it remains more likely that a lack of British clarity on their goals in the coming months could trigger pro-European politicians to implement their veto than that an individual Eurosceptic Premier would move against a united, pro-extension stance of France and Germany.

Securing an extension, therefore, remains a somewhat risky course of action. Said risk could be significantly decreased should the British Government present a clear plan to the European Council forthwith. Furthermore, should said plan entail the holding of a legally binding referendum leading to the implementation of the Withdrawal Agreement, the Revocation of Article 50, specific application for EFTA Membership, or a No Deal Exit, the clarity of each of these options provides an appeal in itself, regardless of the result. A second referendum with clearly defined options is, to some extent, a comfort to all, in that - whatever the result - Britain will have a clear way forward, whether that clear way is the popularly chosen terms of Britain's departure or no departure at all. Only this past Saturday, the Czech Prime Minister beseeched the British Prime Minister to call a new referendum to break the uncertainty.<sup>10</sup>

## ***4 The Likely Outcome***

### ***4.1 Prediction***

There remains little hope that a deal will be struck by 20 March, or by the current Article 50 deadline. Likewise, without a radical change in direction from the Government or Parliament, it is doubtful that a meaningful extension or revocation of Article 50 can be achieved. Therefore, it is our assessment that No Deal is the most likely outcome. Nevertheless, almost everything will come down to those final few days, which will likely be a chaos in Westminster, out of the ruins of which who knows what will crawl. This chaos, in and of itself, damages the potential for a deal to be struck in the long term by making the European demand for the presentation of a clear British plan before they grant any extension difficult to achieve. The faint hope remains that, in those last moments, as the chessboard is tossed into the air, the pieces may fall just so that Parliament might pull together behind a second referendum. This would undoubtedly require the extension of Article 50 though it is likely, given statements from European leaders, the appeal of the certainty of a binding Second Referendum and the relatively high support for Britain to remain, that such an extension could be achieved. Indeed, we believe a second referendum makes such an extension far more likely than any other plan and delivers stability in both the short and long term whilst being broadly acceptable to the European Union and House of Commons, as well as maintaining democratic legitimacy by building on the previous choice of the British people rather than overruling or modifying it.

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<sup>10</sup> <https://www.reuters.com/article/uk-britain-cu-czech/czech-pm-says-new-brexite-referendum-option-cannot-be-ruled-out-idUSKBN1QU16Y>

## **4.2 The Big Picture**

For three-quarters of a century or more, Britain has been experiencing a sort of managed decline. The experience of the past three years - of the 2016 Referendum and the ensuing and ongoing political crisis - has been of a decline that has ceased to be managed. Brexit will compromise Britain's global status as something more than just a mid-sized western state. A recent UNA-UK report puts it lightly when it claims, 'Brexit will have an impact on the UK's standing at the United Nations.'<sup>11</sup> A No-Deal Brexit would constitute the stalling of the engines, and a fall into a downwards spiral, with severe consequences for Britain's place in the world. Westminster has of late been a clamour of intrigue and - for want of a better word - excitement. But, for all the Rumpolian bluster of the Attorney General, or even the indignant philippic of the Leader of the Opposition, the Parliament of a post-Brexit Britain is one that oversees a lonely island, where its MPs are almost indistinguishable: voices dying with a dying fall. It is incumbent on the British Parliament to act now, and act quickly, to extend Article 50, and hold a referendum - with Remain, and terms of departure, as options - to bring clarity to chaos and provide Britain with a way forward from this crisis.

**Alexander Fraser Kumar FRSA**

**Adam John Ellison**

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<sup>11</sup> UNA-UK, 2019, 'Global Britain in the United Nations', p. 16. [https://www.una.org.uk/sites/default/files/UNA-UK\\_GlobalBritain\\_20190207d.pdf](https://www.una.org.uk/sites/default/files/UNA-UK_GlobalBritain_20190207d.pdf)