

"Lord, what fools these mortals be"

Shakespeare, *Midsummer Night's Dream*

Last Friday, 29 March 2019, should have been the day the UK left the EU. Instead, the Westminster Parliament, in a rare Friday sitting, rejected the Withdrawal Agreement component of the Prime Minister's Brexit deal by a substantial majority.

What Happened?

- Parliament has imposed "indicative votes" on possible Brexit outcomes on a reluctant UK government (the Government), but then failed to produce a majority in favour of any outcome
- The Prime Minister has played her last card in trying to get her deal across the line, by saying she would resign when it was approved, but Parliament has again refused
- The EU extension of Article 50 to 22 May has formally lapsed, and the default is extension to 12 April, then a "no deal" Brexit unless the UK comes up with a credible alternative plan
- Parliament tried again on 1 April (colloquially known as April Fool's Day) and again failed to agree any alternative, but a customs union with the EU and a confirmatory referendum attracted most support

What Is Next?

- The Prime Minister appears for now to have abandoned having one last try to get her deal approved; unless the Government can get the Northern Ireland Democratic Unionist Party (DUP) to support it, any such attempt looks unlikely to succeed
- A cross-party group of Members of Parliament (MPs) will try on 3 April to legislate to rule out a "no deal" Brexit
- In a [2 April statement from Downing Street](#), after a marathon eight-hour Cabinet meeting, the Prime Minister announced that she would start talks with Opposition Leader Jeremy Corbyn to try to reach agreement on a proposal for the future relationship between the UK and the EU, which could then be legislated in the Withdrawal Agreement Bill, and on this basis, she would request a further "short" extension from the current legal Brexit date of 12 April – however, not to go beyond 22 May, when the UK would need to participate in the European elections

What Does It All Mean?

A prominent historian last week described the position as the greatest constitutional crisis in the UK in 300 years. Parliament cannot agree on anything, except what it does not want. The Prime Minister's last gambit looks unlikely to succeed, but has deprived her of the last vestiges of authority. The EU looks on with irritation, but also concern. Up to 1 million people marched in London in favour of a further referendum. A petition to revoke Article 50 gathered 6 million signatures. On 29 March, supposedly "Brexit Day", angry demonstrators converged on Parliament, deprived of what they thought they had voted for. The public is increasingly fed up with the antics of politicians. Business is exasperated.

The options, however, remain the same: deal (though, not necessarily the Prime Minister's deal: her 2 April statement implied that she will no longer keep pushing this), "no deal", or no Brexit. If Parliament is against both Prime Minister May's deal and "no deal", and against any alternative deal, the logic points to no Brexit. However, only 184 MPs supported that option last Wednesday evening. The Prime Minister's 2 April statement, in effect, opens the way to relaxing some of the Government's "red lines" in terms of the future relationship: the Labour Opposition has always argued in favour of a closer future relationship with the EU. The Prime Minister was clear that she will not be seeking changes to the Withdrawal Agreement as negotiated with the EU (the Treaty on separation arrangements, covering citizens' rights, financial settlement and the Irish border), but will instead look for cross-party agreement on the basis for the future relationship, currently dealt with in an open-ended way in the accompanying Political Declaration (which the EU has repeatedly said it is willing to amend). The Prime Minister's aim is to achieve a clear agreement with the Opposition on a legislative timetable, which will ensure that all necessary steps can be taken in good time for Brexit to happen by 22 May.

Both the prospect of cross-party talks, and the possibility of legislation ruling out a “no deal” Brexit, make “no deal” less likely. However, they do not make it impossible. The talks might also lead to stalemate, and the legislation might not pass (it will be strongly resisted by pro-Brexit MPs). A “no deal” Brexit could happen simply because the UK and the EU fail to take the necessary decisions in time. The chances of a “no deal” Brexit have certainly increased over the past week, but it remains an unlikely outcome.

So, however, does everything else. The way forward announced by the Prime Minister on 2 April carries no guarantee of success, and the length of Cabinet deliberations leading up to the announcement is testimony to deep divisions within the Cabinet. A number of pro-Brexit Cabinet Ministers, apparently backed by a letter signed by 170 Conservative MPs, have told the Prime Minister they will resign if she allows a move toward a softer Brexit (e.g. including participation in a customs union, or a delay to Brexit beyond 22 May). A number of pro-EU Cabinet Ministers have been clear in private and in public that they will resign if she adopts “no deal” as Government policy. The Prime Minister’s objective to avoid splitting the Conservative Party looks increasingly difficult. There has been much talk of a General Election as a way out, but neither major party really wants one – it is hard to see how either could write a coherent manifesto – and there is a strong chance that it would not resolve anything. Additionally, most Conservative MPs are absolutely determined not to fight another election under Theresa May’s leadership.

What Could Happen?

The effective deadline for the Government and Parliament to decide a way forward is Friday 5 April. The European Council will meet on 10 April to assess the situation and decide whether to extend the Article 50 deadline beyond 12 April. It is impossible to predict what governmental and parliamentary manoeuvres will lead to this week.

So, the talks between the Prime Minister and Mr. Corbyn need to produce a result before the end of the week, and from the EU’s perspective, that result probably needs also to have been endorsed by Parliament by the end of the week, or certainly before the European Council meeting. If (and it is a very big “if”) those talks do produce an agreement, Parliament’s approval is likely, but not a foregone conclusion: a substantial proportion of pro-Brexit Conservatives will not vote for anything which ties the UK into a closer future relationship with the EU, and the DUP will not support any package which contains the Withdrawal Agreement as it stands. The Prime Minister has said that if the talks do not produce an agreement, Parliament will be invited again to decide the way forward, and the Government will respect the result.

Among a wide range of other unlikely outcomes, the three most probable are:

- No deal Brexit on 12 April, possibly (if the European Council so decides) with a short extension (not beyond 22 May) so that both sides can finalise preparations

- If cross-party talks have agreed a way forward, or if Parliament has determined a way forward, which the Government accepts and the European Council believes credible, a short extension (again, not beyond 22 May) to revise the Political Declaration to take account of the new way forward, contingent on evidence of Parliament’s willingness to approve the Withdrawal Agreement
- A much longer (a year or more) delay to the Article 50 timetable, on EU terms (which are likely to include participation in the European Parliament elections in late May), which would be very likely to lead to a change of Conservative Party leader (and Prime Minister), and possibly a General Election; the chances of a referendum to confirm public support for whatever model of Brexit emerges are also growing

Of these, the second could work, but the first and the third are more defaults in case the cross-party talks fail to deliver. And, bear in mind that all the parliamentary activity in the UK is only one side of the equation – the standard of proof the European Council would need to see the second as credible still looks hard to achieve in such volatile politics in Westminster.

Implications for the Business Community

The range of options, and timescales, into the week after the UK should have left the EU remains as wide as ever. We are still some way from knowing what future trading relationships will look like. However, any final “no deal” preparatory steps should be taken between now and 12 April – it is not our predicted outcome, but the chances of it happening have increased.

On a Related Note

Despite the political impasse in the UK, the EU-US trade negotiations are progressing forward. In October 2018, the US Trade Representative Robert Lighthizer notified Congress of President Trump’s intent to negotiate a trade deal with the European Union. In January 2019, Rep. Lighthizer’s office released a draft negotiating objectives compiled following a hearing and public comments. However, the two sides have yet to agree on a clear path forward. European leaders have steadfastly argued that the talks should be focused on “non-auto industrial goods”, taking agriculture off the table. US stakeholders – including senior congressional leaders – believe agriculture is a key issue, suggesting they may not support a deal without that topic included. Section 232 national security tariffs on steel and aluminum imports, as well as the threat of similar import restrictions on auto/auto parts, have further complicated talks.

Regardless of the complications, a trade agreement between the US and EU has great potential to benefit business communities on both sides of the Atlantic. The two already have a deep and complex trade relationship; the greatest gains are to be made in regulatory cooperation and coherence, streamlining the complex requirements that many of the most heavily regulated industries face.

How We Can Help

Businesses with stakes in the UK, EU and US should make effort to understand how Brexit outcome and the EU-US trade talks could affect transatlantic operations and how to prepare for such impacts.

If you need help with any aspect of your Brexit planning and preparation, or if you are a company that faces heavy regulations in doing business between the US and EU and would like to know how a new trade agreement could help increase cost savings, efficiency and productivity, contact a member of our team. We have sectoral and subject matter expertise, backed by political acumen and legal analysis. We can ensure you are properly informed and prepared.

Key Contacts



Matthew Kirk

International Affairs Advisor, London
International Public Policy
T +44 20 7655 1389
E matthew.kirk@squirepb.com



Donald Moorehead

Senior Partner, Washington DC
Financial Services & Tax Policy
T +1 202 457 5212
E donald.moorehead@squirepb.com

Global Team



Jeremy Cape

Partner, London
Financial Services & Tax Policy
T +44 20 7655 1575
E jeremy.cape@squirepb.com



Wolfgang Maschek

Partner, Brussels
European Public Policy
T +322 627 1104
E wolfgang.maschek@squirepb.com



Frank Samolis

Partner, Washington DC
International Trade
T +1 202 457 5244
E frank.samolis@squirepb.com



Robert MacLean

Partner, Brussels
International Trade
T +322 627 7619
E robert.macleane@squirepb.com



James Wharton

Senior Advisor, London
European Public Policy
T +44 20 7655 1547
E james.wharton@squirepb.com



Annabel Mace

Partner, London
Labour & Employment
T +44 20 7655 1487
E annabel.mace@squirepb.com



Edward Newberry

Partner, Washington DC
Public Policy
T +1 202 457 5285
E edward.newberry@squirepb.com

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