

End of the beginning for Brexit?

Parliament likely to vote again on the Withdrawal Agreement in last push to get Brexit over the line

On Wednesday 20 March 1,000 days will have passed since the UK held an historic vote to leave the European Union. 1,000 days filled with accusations and counter-accusations; procrastination followed by sudden acceleration; anger, frustration and despair; and, of course, soundbite after soundbite. But perhaps most of all, 1,000 days of uncertainty for businesses and citizens across the European continent. When the headlines are written this week, will they reflect the end of the beginning for Brexit, or will that uncertainty continue for the nervous weeks to come?

After a week of intense activity on Brexit, MPs are set to have a third attempt at approving the draft Withdrawal Agreement negotiated with the EU on Tuesday (or possibly Wednesday) this week. The Government's previous attempts resulted in the largest and fourth largest defeats, respectively, in British political history. Having reduced the majority of opposed MPs to 149 (from 230), the Government now has to try and convince seventy-five MPs to change their minds. Can events in the coming hours change the dynamic so that a majority support the deal? A few critical factors remain in play that will decide the fate of Brexit and, potentially, that of the Government.

Outcome of Brexit deal votes:

1 st 'meaningful vote' majority against	– 230
<i>Number of Conservative rebels</i>	– 118
2 nd 'meaningful vote' majority against	– 149
<i>Number of Conservative rebels</i>	– 75

Ides of March

Before diving into those factors, it's worth recalling the events of the last seven days to set the context for the week ahead.

When Theresa May flew to Strasbourg on Monday 11 March to meet with President Juncker, expectation was high that a revised deal – based on the infamous 'Cox codicil' – would allow the UK to demonstrate that significant concessions had been won from the EU on the Northern Irish backstop Protocol. A weary looking Prime Minister announced that "legally binding" changes had been secured to the existing Withdrawal Agreement – changes that, she anticipated, would secure the support of those MPs who had previously

denounced her deal. Hopes were high that the Attorney General Sir Geoffrey Cox would be able to amend his much-vaunted legal advice on the everlasting nature of the backstop. In less than twelve hours, Mrs May's hopes were dashed.

The 'revised' legal advice from Sir Geoffrey gave a stark warning. Whilst positive about the changes that had been secured – leading to a "reduced risk" of the UK being "indefinitely and involuntarily" trapped in the backstop – the final paragraph of the three-page document produced the killer blow. The legal risk, he said, "remained unchanged".

If neither side acted against the provisions included in the Withdrawal Agreement on 'good faith' and 'best endeavours' there would be, "no internationally lawful means of exiting the [Northern Irish] Protocol." Cue pandemonium as pro-Brexit MPs clamoured to condemn the revised deal, with one Conservative MP using the now infamous missive that, "nothing has changed."

Try as he might, the Attorney General was unable to point MPs towards the more conciliatory changes to his legal opinion. "Yes", he shouted, when asked by a Labour MP

whether the Prime Minister's efforts had made any practical legal change to the Withdrawal Agreement. It would be "very challenging" for the EU to renege on commitments to find alternative solutions and it would be "highly unlikely" that the Member States would accept the ongoing application of the backstop.

All of this, seemingly, fell on largely deaf ears. That evening MPs inflicted another crushing defeat on the deal, by a majority of 149. Suffering from a sore throat, the Prime Minister rose to the despatch box. She acknowledged that Parliament had, once again, rejected her deal. Following commitments made in the previous week, she confirmed that the Government would table motions pertaining to a no-deal Brexit and then on the question of whether to extend the Article 50 process.

The following day an amendment to "reject" no-deal was approved with a majority of four. Nine Conservative MPs broke the Party Whip to deliver that blow to the Government. The Prime Minister stood to tell MPs that, despite the vote, the legal default remained that the UK would leave the EU without a deal on the 29 March, "unless something else is agreed."

In the whirlwind that is Brexit, within twenty-four hours the fortunes had reversed. A motion laid by the Government on extending Article 50 looked certain to be amended by a cohort of pro-EU, senior MPs from across the House. Had they been successful, for the first time in many years MPs would have been able to dictate the business of the House rather than the Government – a process that would have led to a series of votes on the remaining 'models' of Brexit put forward by various sides.

The sight of the Government Chief Whip, Julian Smith, untraditionally fist-pumping a colleague when the amendment was defeated tells you all you need to know about the importance of that victory for the Government (albeit by a majority of just two).

Nonetheless, the result confirmed a critical shift in government policy. For a Prime Minister who had rested her entire premiership on securing Brexit by a singular date in time, she now announced that the Government would seek to extend that deadline by over three months.

And that is where we landed on the Ides of March. A day blighted by terrible tragedy on the other side of the world. But also a day when the Government, perhaps, began to turn the tide on Brexit.

Light at the end of the tunnel?

During the debate on extending Article 50, the Brexit Secretary confirmed that the Government would ask MPs to, once again, vote on the Withdrawal Agreement, "by 25 March". The task now is for the Government to convince

seventy-five MPs to change their minds and vote for the deal.

Efforts have concentrated on the Government's supply and confidence partner, the DUP. Negotiations took place all Friday and over the weekend, with senior Ministers – including the Chancellor – being involved. The DUP have made two public demands to secure their support for the deal. The first is an assurance, probably written into law via the Act that will implement the Withdrawal Agreement, that there will be no difference in internal trade regulations between Northern Ireland and Great Britain. The second, and more challenging to codify, is for Northern Irish politicians to have a role in future trade talks with the EU.

Securing the ten DUP votes with these two commitments would, it is thought, unlock significant numbers of European Reform Group (ERG) Conservative MPs.

However, there is a cabal of hardcore Brexiteer MPs for whom almost no-deal would be acceptable – their aim is to secure a no-deal, or a 'WTO Brexit' as they term it. Estimates vary as to how many are in this group. It is almost certainly no lower than fifteen, and probably closer to twenty.

In addition, there are seven Conservative MPs who are ardently against Brexit. As a pure numbers game, the basic sums are:

- Securing 10 DUP MPs leaves the Government needing 65 more MPs to vote for the deal
- Leaving out 20 ERG MPs and 7 Conservative 'remain' MPs, that leaves 48 Conservatives from the 75 that voted against the deal
- If all 48 of them voted for the deal, 17 other votes would need to be found, almost certainly from the Labour benches
- 5 Labour MPs voted for the deal already, meaning a total of 23 Labour MPs need to break their own Whip and vote for the deal.

There are some big assumptions in those calculations – most importantly that, so far, only a handful of Conservatives who voted against the deal previously have publicly said they would now support it. Over forty more need to be convinced to do the same.

What of the Labour MPs? There are certainly some for whom the alternatives are not acceptable. Although the question was different, eighteen Labour MPs chose to defy the Whip and vote against the amendment calling for a second referendum last week. For No.10, these MPs will be the focus of attention as we get closer to the vote itself.

Is there anything the PM can do to secure these votes beyond the existing tactic of providing MPs with a *fait accompli* of voting for the deal or facing a lengthy extension? Some commentators have suggested allowing a free vote, providing Labour MPs with the opportunity of saying they didn't vote to support the Conservatives but to secure a deal to leave the EU that their constituents want.

Others have pointed to the option of the Attorney General further altering, or providing new, legal advice as to the options available to the UK if it wanted to exit the backstop in the future. This centres on the Vienna Convention and the highly controversial application of Article 62, allowing one party to a Treaty to withdraw if there is, "a fundamental change of circumstances". Without going into the legalese, it appears unlikely that Sir Geoffrey will offer his endorsement of such an approach.

One other suggestion is for the PM to re-confirm and add to her commitment to stand down before the next election; she could say that she will not be the Prime Minister for the next phase of negotiations. This might allow ERG MPs to install their preferred leader and negotiate a looser relationship.

As it stands, no one option outlined above is likely to convince enough MPs to back the deal. In combination, however, these commitments could be seen as powerful enough to dissuade wavering MPs from risking a long extension to the UK's membership or no Brexit at all.

Extended sentence

This last critical factor, that of a lengthy extension, is itself throwing up new and controversial issues. Legal minds are still debating whether an extension beyond the date of the EU elections would require the UK to participate in them. What much of the analysis seems to omit is the fact that, as a full member of the EU, UK citizens have the fundamental right to send MEPs to Brussels and Strasbourg. Any attempt to find a process that avoided elections in the UK will surely be challenged in the Courts and, in all likelihood, upheld as a breach of rights.

The Government's proposal for a short extension until 30 June appears to be based on the calculation that MEPs will only be formally constituted on 1 July. As a result, if the UK left by this point there would be no need to hold elections.

This view is being challenged, however, given the potential events that could unfold even if a Withdrawal Agreement is passed by MPs. What if, for example, Parliament fails to pass the EU Withdrawal (Implementation) Bill, the key piece of legislation that would make the Agreement valid in UK law? That scenario might lead to a no-deal, or a request for further extension – an impossibility if the UK had not held those elections.

Key figures in the European Commission are instead arguing that any short extension for ratification purposes should be until the latest 22 May – the day before elections begin. However, others argue that a work-around could be found and that the issue of the elections isn't an insurmountable barrier to an extension beyond the election dates.

Beyond this, if the UK is unable to pass the Withdrawal Agreement before this week's EU Council a far longer extension will be required. This is not least because, following the EU elections, the process of approving the nomination of EU Commissioners will begin in the autumn – the mandate of the existing Commission to renegotiate Brexit with the UK would be seriously diminished.

Senior EU leaders have been adamant that a longer extension would be granted, but only if the UK can demonstrate a process for completely reassessing its Brexit strategy. In layman's terms, this means one or both of a second referendum and a General Election, followed by a new consensus on what type of Brexit the UK wants. How long all this could take is pure conjecture, but it would be logical to assume that the end of the calendar year would be a minimum – more likely is a period of a year (until March 2020) or potentially longer. Some sources have suggested 21 months; to the end of December 2020 (the end of the existing transition period envisaged in the Withdrawal Agreement).

Final countdown

The question of a short or long extension hinges entirely on whether Parliament passes the Withdrawal Agreement. The numbers are currently against the Government. Indeed, International Trade Secretary Liam Fox indicated that if the Government believed that they wouldn't be able to pass the deal, then the third meaningful vote won't be called.

As this article is published we still don't know whether the DUP have been convinced to now back the deal. So much rests on this critical factor – but it's safe to assume that if they decide not to back the Government, the deal stands no chance of passing and a longer extension will be sought by the Prime Minister later this week.

If she does, there are plenty of reasons to assume that her time in No.10 will swiftly come to an end. Eight Cabinet Ministers voted against the motion calling for an extension last week; most of whom would almost certainly look to depose Mrs May if the UK's policy was to seek a lengthy extension. Similarly, there would be the strong possibility of Conservative MPs resigning the Whip – it would only take three MPs to do this before the Government had no practical majority in the Commons. This could well precipitate a further no-confidence motion or the resignation of the Prime Minister. A General Election could follow in due course.

As we enter the final countdown for the first phase of Brexit, the situation remains as confused and as uncertain as it was on 24 June 2016. In the most optimistic and, perhaps, most unlikely scenario we find ourselves by the end of the week with an approved Withdrawal Agreement, confirmation from EU leaders that a short, technical extension is granted and a statement from the Government outlining how they intend to pass the necessary legislation to complete Brexit before the revised departure day. Many MPs from across the House will breathe a sigh of relief and business can begin to unlock the plans they have made to manage Brexit with a transition period.

On the other end of the scale, we could continue to see an impasse in Parliament, a refusal by the EU Council to endorse an extension of any length until the UK outlines its plan for further negotiations on a revised deal, and mass resignations by Conservative MPs that precipitates the collapse of Government.

It's safe to assume that the actual outcome will be somewhere between those two extremes. But, as with everything relating to Brexit, providing a definitive answer is far more challenging than it seems. With less than two weeks remaining until the UK's legal exit date, businesses and citizens are crying out for an end to the uncertainty that has dogged the whole process. Although a deal and the return of some semblance of normality might be possible, one thing is clear. This is just the start of the battles ahead – deal or no-deal, the UK's slow extraction from the EU won't be complete for many years to come.



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