

WHY WE THINK THE UK IS HEADING FOR A "SOFT BREXIT"

To Our Clients and Friends:

1. Our discussions with politicians, civil servants, journalists and other commentators lead us to believe that the most likely outcome of the Brexit negotiations is that a deal will be agreed at the “softer” end of the spectrum, that the Conservative Government will survive and that Theresa May will remain as Prime Minister at least until a Brexit deal is agreed (although perhaps not thereafter). There is certainly a risk of a chaotic or “hard” Brexit. On the EU side, September’s summit in Salzburg demonstrated the possibility of unexpected outcomes. And in the UK, the splits in the ruling Conservative Party and the support it relies upon from the DUP (the Northern Irish party that supports the Government) could in theory result in the ousting of Prime Minister May, which would likely lead to an extension of the Brexit deadline of 29 March 2019. However, for the reasons set out below we believe a hard or chaotic Brexit is now less likely than more likely.
2. Some background to the negotiations can be found [here](#). It should be noted that any legally binding deal will be limited to the terms of the UK’s departure from the EU (“**the Withdrawal Agreement**”) and will not cover the future trading relationship. But there will be a political statement of intent on the future trading relationship (“**the Future Framework**”) that will then be subject to further detailed negotiation.
3. There is a European Council meeting on 17/18 October although it is not expected that a final agreement will be reached by then. However, the current expectation is that a special meeting of the European Council will take place in November (probably over a weekend) to finalise both the Withdrawal Agreement and the Future Framework.
4. Whatever deal Theresa May finally agrees with the EU needs to be approved by the UK Parliament. A debate and vote will likely take place within two or three weeks of a deal being agreed – so late November or early December. If Parliament rejects the deal the perceived wisdom is that the ensuing political crisis could only be resolved either by another referendum or a general election.
5. However:
 - the strongest Brexiteers do not want to risk a second referendum in case they lose;
 - the ruling Conservative Party do not want to risk a general election which may result in it losing power and Jeremy Corbyn becoming Prime Minister; and
 - Parliament is unlikely to allow the UK to leave without a deal.

6. As a result we believe that Prime Minister May has more flexibility to compromise with the EU than the political noise would suggest and that, however much they dislike the eventual deal, ardent Brexiteers will likely support it in Parliament. This is because it will mean the UK has formally left the EU and the Brexiteers live to fight another day. The UK's current proposal (the so-called "Chequers Proposal") is likely to be diluted further in favour of the EU, but as long as the final deal results in a formal departure of the UK from the EU in March 2019, we believe Parliament is more likely than not to support it, however unsatisfactory it is to the Brexiteers.
7. The key battleground is whether the UK should remain in a Customs Union beyond a long stop date for a transitional period. The UK Government proposes a free trade agreement in goods but not services, with restrictions on free movement and the ability for the UK to strike its own free trade deals. This has been rejected by the EU on the grounds that it seeks to separate services from goods which is inconsistent with the single market and breaches one of the fundamental EU principles of free movement of people. The Chequers Proposal is unlikely to survive in its current form but the EU has acknowledged that it creates the basis for the start of a negotiation.
8. There has also been discussion of a "Canada style" free-trade agreement, which is supported by the ardent Brexiteers but rejected by the UK Government because it would require checks on goods travelling across borders. This would create a "hard border" in Northern Ireland which breaches the Good Friday Agreement and would not be accepted by any of the major UK political parties or the EU. The consequential friction at the borders is also unattractive to businesses that operate on a "just in time" basis – particularly the car manufacturers. The EU has suggested there could instead be regulatory alignment between Northern Ireland and the EU, but this has been accepted as unworkable because it would create a split within the UK and is unacceptable to the DUP, the Northern Ireland party whose support of the Conservatives in Parliament is critical to their survival. This is the area of greatest risk but it remains the case that a "no deal" scenario would guarantee a hard border in Ireland.
9. If no deal is reached by 21 January 2019 the Prime Minister is required to make a statement to MPs. The Government would then have 14 days to decide how to proceed, and the House of Commons would be given the opportunity to vote on these alternate plans. Although any motion to reject the Government's proposal would not be legally binding, it would very likely catalyse the opposition and lead to an early general election or a second referendum. In any of those circumstances, the EU has already signalled that it would be prepared to grant an extension to the Article 50 period.

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