



HFMA UPDATE

by Graham Keen,
Executive Director

Is the end in sight?

For all of us, it feels like we are coming towards the finish line of the most interminable, frustrating and annoying periods of political ineptitude in our lifetimes. I think we all feel, whichever side of the Brexit line we fall, that our political representatives have seriously let us down in the way they have collectively handled the post-Referendum period. And we are left with a widespread feeling that something needs to change.

It's just a personal view, but this same mass sense of alienation from, and disaffection for, our political representatives can lead to significant change, and you only have to look across the 'pond' to see a clear statement of that. An electorate divided almost equally, feeling utterly let down, and searching for something different. A new way. Sounds familiar doesn't it, and you wonder how 'Trump' happened?

As I write this, Parliament is preparing itself for another historic week as it gets ready to vote on Theresa May's Brexit deal for a second time. Whether the result will be any different appears to be in the hands of Geoffrey Cox, the Attorney General. Cox, Brexit Secretary Steve Barclay, and EU Chief Brexit Negotiator, Michel Barnier, have been trying to find legal assurance to the Irish backstop that will assure the Democratic Unionist Party and the European Research Group's 'Gang of Eight' Brexiteer lawyers (which also includes Nigel Dodds MP of the DUP) the backstop will be indefinite.

Reports suggest that Cox has presented the idea of an 'arbitration panel' to the EU that would determine if the two sides were acting in good faith and were being reasonable in their efforts to identify alternative arrangements to the backstop. Cox also reportedly proposed the concept of a new 'mini backstop' that would limit the mechanism to only cover elements that relate to border infrastructure.

The EU has not responded positively, arguing the UK is "questioning the legal stability of the backstop" and is trying to find a "legal solution to a political problem". It is widely considered that, should no breakthrough in negotiations occur by the weekend, the Government will be heading for another large defeat – perhaps not as historic, but definitely as decisive.

Even if the UK and EU manage to agree a solution in time, officials in Number 10 are pessimistic about the chances of it being enough for Conservative Brexiteers to support the deal, particularly as the tests the 'Gang of Eight' Brexiteers have set for a revised deal appear to be unachievable. They require legal guarantees on the backstop, which would override the text of the treaty – something the EU is highly unlikely to concede. Attempts by Number 10 to woo Labour MPs to support the Prime Minister's Brexit deal through a package of new laws on workers' rights introduced after Brexit and the launch of the £1.6bn Stronger Towns Funds also appear to have been unsuccessful, further signalling the Government is heading for another decisive defeat on May's Brexit deal.

Downing Street has conceded that, should 'Meaningful Vote 2' be defeated, the Government could lose further control over Parliament and a delay to Brexit would then be hugely likely. How the Prime Minister would respond, and how the EU would react are further unknowns that mean the cloud of uncertainty is here to stay for the foreseeable future.

From the EU side of the argument, the EU27's Ambassadors met Michel Barnier at short notice this week to discuss the state of negotiation, and there is little indication that Brussels is preparing to move any closer to the UK's position on the backstop. The EU's main objection to Attorney General, Geoffrey Cox's, proposal is that it could rescind the backstop if



an independent panel determined that the UK had made enough 'reasonable' endeavours to secure a close trading relationship with the EU post-Brexit – even if those trade talks failed.

For the EU, such a breakdown in negotiations is the very reason why the backstop is needed. Any scenario in which a hard border could return post-Brexit would not be acceptable under the Withdrawal Agreement. Furthermore, even if the Member States were to agree a change, the European Parliament's Brexit Steering Group already vowed in January to veto the deal if the 'all-weather' backstop is watered down. The Prime Minister's and Foreign Secretary's attempts to lay responsibility for a No-Deal Brexit at the EU's feet are unlikely to help, as many in Brussels and the European capitals feel they have shown flexibility to the UK. Irish Taoiseach, Leo Varadkar, has reiterated that the current backstop was already a compromise on the EU's original offer, and said it was now up to the UK to offer solutions and compromises.

Should no agreement be reached, many in the EU expect the UK Government to request an extension. However, the EU Member States' appetite for an extension under such a scenario is an unknown. Unanimity is required amongst all 27 Governments – a rarity in the best of cases. French President Macron has already stated he would only

grant an extension with a "clear" purpose, rather than prolonging the uncertainty. So, it seems to me that even if 'Withdrawal Vote 2' is defeated and the UK tries to step back from Brexit and call for a delay, leaving with 'No-Deal' in March or even later this summer would still seem to have a high probability of taking place.

Of course, by the time you are reading this the situation will be clearer. One of the dangers of writing on this subject is that it is so fluid, and this may read like relatively recent ancient history! One thing is for sure, with the help of our Public Affairs advisers at Cicero Group, at the HFMA, we are doing everything we can to keep on top of the situation and make sure our members are kept informed of the potential impacts of a 'No-deal' scenario, and providing helpful and informed advice. And we are keeping a very close eye on the developing issues that continue to emerge from Brussels, for example, the regulatory status of CBDs, and I was over there recently making sure that this particular issue is very much on the agenda of our European federation, EHPM. **hfb**

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