UK: THE SAFEGUARDS AGAINST A HARD BREXIT

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Approaching the moment of truth
Seldom has British politics been so fraught. On Sunday 25 November, the UK and EU want to formally agree the Brexit withdrawal agreement and a declaration on their future relations. Thereafter, the deal will arrive in UK Parliament for debate and ratification. All potential scenarios – a deal, no deal and no Brexit – are still possible. Our base case remains that, in the end, parliament will either pass the current deal or – after significant political turmoil – will endorse some other solution that avoids a “no deal” hard Brexit.

Amid all the noise, Prime Minister Theresa May seems to be managing the first hurdle. The attempt to topple her led by hardline Eurosceptic Conservative MP Jacob Rees-Mogg seems to have petered out. On its own, that does not raise her chances very much to get her current deal through parliament. May argues the alternatives to her deal are much worse – for the Tories and the UK. Yesterday’s news that the EU had agreed to beef up the commitments on future trade boost her chances of getting her deal through parliament in a first or – possibly – a second vote at the margin.

Still, we see a serious risk that May will not succeed. After all, the plans for future trade are not legally binding. They might not do much to soften the most ardent opponents of May’s deal. The Conservative-DUP (Democratic Unionist Party) alliance has only a 13-seat working majority in the House of Commons. If no opposition MPs backed May’s deal, it would only take a small group of Government MPs to prevent it from passing through Parliament. This highlights the risk of a no-deal hard Brexit, which we put at 20%. But as we argue below, getting from a rejection of May’s current deal to a “no deal” hard Brexit is not as straightforward as it might seem.

The coming weeks are critical
Westminster is a place on its own. As Brexit legislation is brought to the House of Commons and debated, many commentators will likely draw attention to procedural technicalities and their implications. Since the UK has a collection of key documents and precedents, as opposed to a codified constitution, the scope for different interpretations of the rules can be wide – even among constitutional experts. The patchwork nature of the UK system means some procedures can be complicated and arcane. This can be disorientating. However, there is one significant upside. More than that of most places, the UK constitutional framework offers significant flexibility.

There are few hard and fast rules than can prevent a house majority from getting its way. A majority in the House of Commons could in practice, through sheer ingenuity, amend or get around procedural impediments to achieve its goals. The ultimate deciding factor could be whether the faction within the Conservative parliamentary party that is either pro-EU or wants a soft Brexit is willing to use all available parliamentary procedures, including the threat of bringing down the Government, to prevent a hard Brexit.
UK Parliament, not Government, is sovereign
A majority of the House of Commons – which is pro-EU or at least in favour of a soft Brexit – would have to be complicit in a hard-Brexit scenario. The challenges faced by the prime minister in getting her deal through Parliament do not automatically raise the risk of a hard Brexit very much. More likely, they make the path to an eventual deal messier than we, and the market, had once hoped.

Until now, the Government has enjoyed a near-monopoly over shaping the UK’s approach to Brexit. Now that the prime minister has agreed the withdrawal treaty and a political declaration for the future UK-EU partnership with the EU, the influence of Parliament increases significantly. May has tried to frame the upcoming vote as being a choice between a “deal or no deal”. But this is not the case. Although Parliament cannot dictate Government policy when it comes to Brexit, the House of Commons will have several opportunities to influence the outcome of Brexit if May’s deal fails on the first pass.

1. **A second vote on the deal is possible:** Nothing in the provisions for the House of Commons’ vote on the Brexit deal would prevent parliament from voting again if the deal was rejected in the first vote. However, parliamentary rules dictate that a motion which is voted down cannot be brought back to the house during the same session (generally lasting a year). However, it would require some clever change to the text of the motion, and the approval of the house chair, to enable a fresh motion to be put to the house that still allowed the house to de facto vote twice on the deal. If the first vote is close, chances are that every effort would be made to facilitate a second vote. Under greater pressure to avoid a damaging hard Brexit, the chance that a majority of MPs backed May’s deal would probably be higher the second time around.

2. **Parliament will get to vote on a “no deal”:** Thanks to the efforts of pro-EU Conservatives, the Government has agreed to give Parliament a vote in a “no-deal” scenario. For this purpose, a “no deal” is defined as: (1) If Parliament has decided not to pass the Government’s motion to approve the withdrawal agreement and future framework; (2) If, before 21 January 2019, the Government tells Parliament that no agreement can be reached; or (3) If after 21 January 2019, no agreement has been reached. In a no-deal scenario, the Government would have to make a statement to Parliament setting out its plans on what to do next and make arrangements for Parliament to consider them. The house will get a chance to have a non-binding vote on the Government’s plans. There is an ongoing debate about whether Parliament would be able to debate and alter the Government’s plans in case of a no deal. However, it would be symbolically very important if the Government failed to secure a majority on how to proceed in such circumstances. Ministers would be under major pressure to change course and offer a policy that could gain a majority in Parliament or subject the Government to a confidence vote (see below).

3. **Parliament would play a role even in a “no deal”:** There is a major difference between a managed hard Brexit (which would require Parliament to enact legislation) and a chaotic one where the UK falls out of the EU but does not do anything to smooth the transition. In a “no deal” scenario, the Government would need to enact a series of new laws and regulations relating to future trade, migration, and so on. While Parliament’s opportunity to
influence Brexit would be more limited at this point, it would still be able to seriously undermine the Government’s ability to manage the UK’s affairs. This crucial part that Parliament would play in a hard Brexit highlights how the Government would struggle to move against Parliament if plans for a no deal were voted down (see point 2).

**What happens if May’s deal falls through?**
We see four potential scenarios if May does not manage to get her deal through Parliament.

1. **The UK stumbles into a hard Brexit:** It is feasible that the Government stays in office but does not enjoy a majority to enact any necessary Brexit legislation. This would be a very unusual situation in British politics, which places a lot of weight on strong government. However, from a technical point of view, it is not impossible. It implies that hardline Remainers and moderates in the Conservative Party (plus the DUP) worked together to keep the Government in power, but did not provide the necessary majority to pass other Brexit-related legislation, including to manage a hard Brexit. Such a situation of intractable parliamentary gridlock is the worst-case scenario. Amid a constitutional crisis, the UK could end up leaving the EU without a deal.

2. **The pro-EU parliamentary majority takes over:** The pro-EU/moderate majority in the Conservative Party has the power to frustrate a hard Brexit if it acts early enough. Chances are that, if Parliament failed to pass May’s deal, almost all opposition MPs would vote against the Government on any of its subsequent Brexit plans, thereby strengthening the hand of the pro-EU faction of the Conservative Party. Just as the hardline Brexiteers can thwart May’s current deal by not backing it in Parliament, the Remainers would have the chance to thwart a hard Brexit by voting against the Government in motions of confidence unless the Government took steps to avoid a hard Brexit. Remember, as we will know by 21 January 2019 or shortly thereafter, if the UK may be heading for a hard Brexit, pro-EU Conservatives will have around 10 weeks to force the Government to seek out terms with the EU to prevent a hard Brexit, or else bring down the Government. This could involve the UK materially softening its position with respect to future UK-EU trade – ie full membership of the customs union for the whole UK – which a cross-party majority in Parliament would probably support.

3. **Conservatives go for a second referendum:** Although there is some momentum behind the idea of a second referendum within the Conservative ranks, it remains an unlikely scenario. The divisions within the Conservative Party on the European question run deep. Because a second referendum would risk splitting the party in two, a majority of Tory MPs remain strongly against it. In would take an extreme scenario before a significant number, let alone a majority, of Tories were to see a second referendum as a viable way out. Even then, some hardline Brexiteers – determined to drive the UK to a hard Brexit – may still be able to obstruct Parliament in backing a second vote. Most opposition MPs, upon recognising the Conservatives’ fate, would probably not back a second referendum but demand early elections first which may then be followed by a second referendum. In our view, the most likely scenario for a second referendum would be following snap elections that ended in a Labour-led coalition with the very pro-EU Liberal Democrats or Scottish National Party (SNP).
4. **Fresh elections**: Snap elections would further raise the level of uncertainty. Currently, the Conservatives and Labour are roughly neck and neck in the polls. Chances are that Labour as well as the Liberal Democrats and UKIP would gain support if the Conservative government fell apart. A Labour government or a Labour-led coalition would go for a softer Brexit. If Labour won an outright majority, its leaders would probably sign the whole of the UK up to the customs union, with the promise of full regulatory alignment in goods. If they had to rely on the strongly pro-EU Liberal Democrats or SNP for a working majority, either party would likely try to force Labour to either soften its stance to a Norway-style agreement with the EU (goods and services) or go for a second referendum. If a general election was called before Brexit happened, we would expect a cross-party effort by pro-EU MPs to strike some deal with the EU to avoid a hard Brexit. It is not obvious how this would happen. Without any clarity about what the UK would sign up to, the EU may find it difficult to agree some mechanism to prevent a hard Brexit simply to give the UK more time to sort out its affairs.

**Potential routes to fresh elections**
If a majority in Parliament is: a) unable to pass a deal, b) votes against “no deal”; c) and does not pass the necessary legalisation to implement a hard Brexit, the Government would find itself in a very precarious situation. Amid the likely economic and political turmoil, the Government would come under immense pressure to subject itself to a vote of confidence or resign. The possible routes to a general election are defined in the 2011 Fixed Parliaments Act – Table 1:

**Table 1: The routes to a fresh election**

<table>
<thead>
<tr>
<th>House of Commons holds a confidence vote in government</th>
<th>Simple majority defeats the government</th>
<th>House of Commons holds a vote on a general election</th>
<th>Super-majority of MPs (2/3) vote for a general election</th>
<th>Incumbent Prime Minister announces election date</th>
<th>Both houses of parliament pass the amended bill</th>
<th>Incumbent PM uses new rule to call an election</th>
<th>UK holds general election</th>
</tr>
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**Source: UK Parliament**

The 2011 Fixed Parliaments Act significantly restricts the means through which snap elections can be triggered. In the past, ministers could attach a vote of confidence to another vote in the house – de facto triggering snap elections if the Government lost the vote. This is no longer possible. The Act also makes the prospect of a minority government that lasts more likely than before. Before 2011, if the Government was defeated on a budget, the Queen’s speech or a key piece of legislation, this was a de facto vote of no confidence in the Government.
As a sidebar to these central themes, two other issues are worth keeping in mind:

1. **The Conservative-DUP pact**: The 10 Northern Irish DUP MPs provide the minority Conservative Government with a working majority of 13 seats in Parliament. The Conservative-DUP alliance is based on a “confidence and supply” agreement: the DUP should back the Conservatives in “confidence” votes and on fiscal “supply” votes. The DUP has threatened to vote against May’s withdrawal agreement due to the regulatory commitments by the UK in the so-called “backstop”. These commitments would de facto keep Northern Ireland in the single market for goods – but not Britain – once the transitional period has ended if the UK and EU have not agreed to other terms of trade that keep the Irish border open. However, the DUP could simply abstain from the vote on May’s deal without breaching the Conservative-DUP pact while still backing the Tories in any confidence motions. If the DUP abstained the Conservatives would (theoretically) have a working majority of three MPs.

2. **Theresa May is probably safe for now**: Widespread reporting in the UK press suggests that the Brexiteers in the Conservative parliamentary party are just a couple of signatures short of the 48 needed to trigger a vote of no confidence in Theresa May. In our view, she still has a good chance of remaining Tory leader and prime minister until at least the Brexit deal has gone through the necessary parliamentary processes, and if successful, probably some time into the transitional period which is set to begin in April 2019. With no obvious challenger who can carry a 158-vote majority among Conservative MPs, and probably, with no party majority to bring her down in a vote of no confidence (there are 315 Conservative MPs in the House of Commons), May seems safe for now. Since whoever replaced May would face the same challenges as her, any moderate who could carry a majority within the Tory ranks probably does not really want the top job at the moment. Keep in mind, if May survived such a vote, her MPs would not be able to make another such challenge for another 12 months.

**Further reading**

- [UK heading for Brexit abyss? Unlikely](#)
- [UK-EU strike a deal, showdown in Parliament ahead](#)
- [UK: Growth spurt ahead if Brexit deal is struck](#)