

Call Brunswick: Parliament sets Brexit's course?

Call Brunswick's latest panel discussion took in expert views from PwC UK, international law firm Hogan Lovells, the Institute for Government and Brunswick's public affairs team. The debate focuses on:

- Preparations businesses should be making now for a no-deal Brexit
- The options for the UK Government in its renewed attempt to negotiate with the EU27
- The legislative heavy-lifting that still needs to be done in the UK Parliament to implement a deal, should it be consummated, and
- The key milestones on the road ahead

Speakers:

- Maddy Thimont-Jack, Researcher, Brexit Team, Institute for Government
- Charles Brasted, Partner, Public Law, Hogan Lovells
- Anna Wallace, Director of Political Relations, PwC UK
- Sumeet Desai, Partner, Brunswick Group LLP

Moderated by: Jon Mcleod, Partner and Head of UK Public Affairs, Brunswick Group

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JON MCLEOD: Good morning, everyone. Welcome to Call Brunswick: Parliament sets Brunswick's course. That had a question mark after it. I think we can remove the question mark this morning and say, "No, it doesn't", because the great constitutional experiment launched by Dominic Grieve, Yvette Cooper and Nick Boles flopped magnificently last night. We can all toss our copies of *Erksine May* out of the window and stop sweating about parliamentary procedure because the boys are back in town. The Tory Party is reunited around its favorite activity, which is loathing European institutions and getting into a good political dust-up with them, which we are going to have two weeks of between now and 13 February, which is the deadline for the next meaningful vote.

As always on Call Brunswick, we have an exciting line-up of speakers, which I will talk you through now. First, we are going to be hearing from Sumeet Desai, who is a colleague and partner in Brunswick Group, with a creditable track record in public affairs, financial services and economics, so definitely a guru figure when it comes to Brunswick. We also have with us Maddy Thimont Jack, who is part of the research team at the very highly respected Institute for Government. She previously worked at Britain Thinks, the research organization, and previously was with the United Nations in New York.

Then we have Charles Brasted, who is a partner in public law at the leading City and international law firm Hogan Lovells. Charles's glory is writ large over all the legal directories. I think we have access to one of the best public law and constitutional brains in the market this morning, so I am looking forward to hearing from him. Finally, we have Anna Wallace, who is the director of political relations at PwC in the UK and leads that firm's expert work on advising businesses and client organizations on political risk, not the least of which is Brexit right now.

We had what must have been the parliamentary equivalent of a penalty shoot-out last night, at least in slow motion, and Theresa May definitely won on penalties. She has gone away, by and large, with what she wanted, which is the Brady amendment saying, "We don't really like the backstop and we would like something different, please". She is now back to Europe and there is only the slight fly in the ointment, but it is a very slight fly in the ointment, of Caroline Spelman's amendment, which only won by eight votes, saying no to no deal. It is a non-binding, non-legally enforceable amendment, so is probably being swatted away by Number 10 at the moment.

I am going to turn first to Sumeet Desai, partner in Brunswick Group, to give us his views on the political situation. I am not going to over-stress Sumeet's throat this morning because he is suffering but kindly battling on. Sumeet, I will hand over to you for as long

as you can take it.

SUMEET DESAI: You are absolutely right, Theresa May may have won yesterday's parliamentary jousting, but it is a case of one day's headlines and, really, how long are these going to last? Essentially, nothing much has really changed. The default position remains that we are headed for a no deal. There was a huge amount of outcry last week where we talked about Parliament taking back control. Markets took succor, saying, "We are headed towards a soft Brexit, because even if the Tories can't agree on this, there is a consensus in Parliament that we don't want no deal and we want to make some progress". There was talk of Tory rebels. It was reported that Amber Rudd and David Gauke, big beasts in the Cabinet - I do not know if they will be big beasts in any other Cabinet - were going to walk out if Theresa May did not allow a free vote.

What we have seen through this whole saga going back a decade is the pro-European Tories always cave in because the party is fundamentally split between lots of people who hate Europe and think it is the absolute enemy and the more pragmatic who think that we should be part of the EU because that is where jobs and prosperity lie. This argument has been going on for 10 years. That is why we had the referendum. In almost every situation, it is the anti-Europeans who have been prepared to take it to the brink. Last week, we had the threat they would resign, but Theresa May was able to buy them off with this Brady amendment saying, "Just give us two more weeks".

What is that going to do? The only thing it really has done is change the narrative for her because before they could not get a deal because the Tory Party were split. According to today's headlines, they now cannot get a deal because Theresa May does not want her own deal and now it's the fault of the Europeans". We are going to have this, "We need to go to them, and we are going to rip up the deal which that we spent two years negotiating and get these extra concessions". The Europeans have already made their point. They came out pretty much instantaneously as the votes were revealed last night, saying they are not going to budge here. Some of this is obviously negotiation. The Government has certainly been spinning when push comes to shove, of course the Europeans are going to relent, but we have been here for two years and people are right to be skeptical.

We will have an extra few days' headlines about what she is going to do. Is she going to talk to the Irish leader, talk to the Germans, talk to the French? It not quite clear why the Europeans would budge and give what certainly the Brexiteers want. Even if they came back with some concessions, they probably feel that at this stage they have already given

so much to Britain, with the exchange the letters, and there is the idea that if they are going to re-open the withdrawal agreement, it could lead to other demands being made. You will remember originally when the signing of the withdrawal agreement was coming, people were talking about opening up Gibraltar again or opening up fishing rights. There is a whole can of worms that could potentially explode. Even if she came back with something, it is not clear that the Brexiteers are going to support this. The backstop is just one of their issues.

JON MCLEOD: Can I ask you, Sumeet, about this question in relation to the method of the variation of the withdrawal agreement and the political declaration? What seems to be the line from Europe is that those two are hermetically sealed in a package with a bow tied round it and you cannot undo that ribbon, as it were, so, if anything happens, if anything gives, it is likely to be some corollary statement or codicil to that page. That structuring of a concession seems to me risky in and of itself from the perspective of the ERG and the Conservative right. What are you hearing about that and how a concession is structured?

SUMEET DESAI: The thing about the ERG is we talk about them as one bloc, but they really are not a bloc at all. There is a whole rag-tag of different people who hate Europe. You have people at its head such as Jacob Rees-Mogg and Steve Baker who are driven and have purpose. On the other side, you also have people who have been anti-European for 30-odd years since the Major Government, and their entire lives and their *raison d'être* - although they probably would not like that phrase - is defined by hating Europe and being against it. Nothing is really going to satisfy them.

There are some conflicting messages from what we have had on that. Some of them do not think the codicil would be good enough, but some are worried now - and we saw this worry when people were talking about Parliament taking back control - that if they do not relent now, Brexit will get put out of their grasp. There are some elements who think, "Yes, we have to make some concessions on our side", but you still have about 25 or 30 people who are never going to relent until you get something much bigger.

JON MCLEOD: In the light of that potentially exacerbating the risk of no deal, which is clearly the big concern to clients certainly of our firm, of PwC and of Hogan Lovells, and using you as the economist in the room, if I may, what is your perception at the moment of how market sentiment is treating this, because a lot of people are saying the markets are just waiting for something to happen and the pound is being influenced by other factors, perhaps weakness in dollar perhaps, perhaps lack of confidence in the German economy? Are we in a phoney war economically and what is your sense of what comes next?

SUMEET DESAI: We saw sterling lose about half a cent yesterday when the Cooper amendment failed. I think it was a kneejerk reaction that on that basis the prospect of no deal had risen. Sterling has also gone up quite a bit in the last few weeks because of the expectation that if Parliament takes control we are headed towards a softer Brexit. Markets are probably overestimating that and underestimating the chances of a no deal. Most people in the Tory Party or the Labour Party do not want no deal, but there is a game of chicken being played here where the Government thinks, "Let's take this down to the wire. Everyone will come around. They will get behind our deal because they will realize there is nothing else". It thinks the EU will relent. Usually, you know that these European negotiations do go down to the wire, but in that scenario there is always a case when lots of people take it to the brink, you actually get to the brink and accidentally have no deal because that is the default position. People are probably not trading sterling as much as they might normally because there is so much uncertainty. You are seeing that in the way lots of UK stocks are also being traded. There is certainly a prospect that they are underestimating the chances of an accidental no deal.

JON MCLEOD: A last question, and I appreciate you stretching your vocal cords in your current condition. We have the Spring Statement I think on 13 March. That will come probably post facto in relation to the end game here - we hope. What are the options fiscally for the Chancellor to do anything to mitigate some of that turbulence around the UK economy?

SUMEET DESAI: At the moment what they are probably planning for in the Spring Statement is just to have a set of forecasts because things will be so uncertain. Since they have switched the Budget around, the new requirement is they have to publish a set of forecasts before the end of March. That is all we are going to get. They will probably be able to be holding forecasts because they will be able to say, "We don't know where we are with the deal at this stage", so there will probably be little change from where they are. It does not feel like there is going to be a big fiscal moment at that point.

JON MCLEOD: Got it. Thank you very much for that, Sumeet. I am now going to turn to Maddy Thimont Jack, who is in the research team at the Institute for Government dealing with Brexit. Maddy is going to talk us through what is going on inside government as much as Parliament. The focus has been on Parliament. We are interested in what is going on inside Whitehall itself and within departments and then the nature and character of that dialogue which has to happen in very short order now with Europe. Maddy, over to you.

MADDY THIMONT JACK: To start with what is going on in government, the Government has obviously said, and it is doing so, that it is stepping up its no deal preparations. As has been discussed, the vote yesterday of MPs saying they do not want no deal does not take no deal off the table in any way. It still needs to prepare, but the scale of the task is huge, as is constantly being said. A colleague of mine has described preparing for Brexit as like preparing for the Olympics Games, but you do not know whether it is the Summer or Winter Olympic Games, you do not know the year it is going to held or which country. That is essentially what the Civil Service is grappling with. They are also grappling with - and this is what they have been dealing with for the last two years - the fact they are legislating, negotiating and implementing simultaneously, which normally you would not do. If you are going to deliver a major project such as universal credit, it will take 10 years before you are in a position to go live, whereas they have had two years to try to prepare for a number of different outcomes, which is why we are in a position where no deal is becoming more concerning. For example, I think 4,000 civil servants are on stand-by to be moved across to some of the key departments which need to prepare for no deal. They will be moved away from the Department for Education and from DfID to join some of the departments which really are in the eye of the storm. They really are resourcing up. There has been a huge increase in the number of civil servants hired over the last two years.

The problem for the Government is, as I say, the scale. They will need to replace EU IT systems. For example, one of the systems that we rely on if you have import food from outside the EU, you need to register with the EU system, and the UK Government will need to build its own. It has been in conversation with the EU to try to address some of the transport challenges: Channel crossings, flights, haulage issues. Very recently it contacted the Lords EU Committee to say it had been rolling over some of the international agreements that we are part of as part of the EU. It said it has rolled over 21. It has a list of those. We do not know how many in total it needs to do. None of those 21 relates to trade. The Government is essentially, or civil servants anyway, is doing the best it can, but it is really challenging.

Particularly in terms of no deal preparations, they are reliant, for the most part, on the EU and Member States, so there is only so much you can do unilaterally. Although the EU has committed itself to taking some unilateral steps where it benefits them, if the EU changed its mind the UK Government could not do very much. That is the big challenge for the Government at the moment.

I can jump into how I see what the EU is thinking at the moment. We have already discussed the fact that the EU has been very consistent in saying, "This is the only deal on the table.

We are not open to renegotiating, particularly the withdrawal agreement”, but, having had conversations with colleagues, we do think that if by some chance the EU said, “Okay, fine, we really do want this deal to get through; we don’t want a no deal scenario”, if they were to re-open some negotiation on a no deal agreement, that is likely to be with a number of quite key conditions. One of the key ones, which I do not think has been satisfied by the vote last night, is whether this deal will actually get through Parliament? The Brady amendment with a majority of 17, but if you want to get the deal through, you have to have another meaningful vote, and you also have to pass the legislation to implement it in a withdrawal agreement Bill.

Quite an interesting comparison that we looked at back when we joined the EU was in 1971 MPs voted by a majority of 112 to join, but by the Second Reading of the European Communities Act, which was needed to implement that decision, it only passed with a majority of eight. You can see there could be quite a significant drop-off in support and the withdrawal agreement Bill is likely to have some quite controversial elements to it. That is going to be one of the biggest challenges: Theresa May convincing the EU that the majority of 17 will stick. We have already talked a little about the fact that the ERG is not necessarily a solid ally of Theresa May. That is the way that I see it at the moment. We have talked about the withdrawal agreement, but the EU has more recently said it is willing to look at the political declaration - the statement of intent for the future relationship - so if Theresa May cannot convince them that they need to re-open the withdrawal agreement, she could try something there. It is just whether that will satisfy backbenchers and get the votes in Parliament which I am not sure about at the moment.

JON MCLEOD: Thank you for that, Maddy. May I ask a couple of quick supplementaries? Practically, on the delivery of a Brexit according to the vision of the Prime Minister, talk us through what Parliament needs to enact. It needs to enact the withdrawal agreement Bill, other primary legislation, secondary legislation, treaty arrangements? What is the stack of stuff they have to process?

MADDY THIMONT JACK: There are two different scenarios we are looking at: the PM’s deal and no deal. With the Prime Minister’s deal, the only piece of legislation you really need in place is the withdrawal agreement Bill needed to implement the deal because what the withdrawal agreement says is, we are going to continue to follow EU rules during that time. It will buy us more time to get any of the other legislation in place, because we will not need new policies, for example, in agriculture and we will not need a trade deal in place until the end of the transition because Ministers will not be implementing trade agreements until after that point. It takes the heat quite significantly off the Prime Minister. As I said, that is

going to be quite a controversial piece of legislation. It is going to be giving direct effect to EU law during that period. It will also ensure that the withdrawal agreement itself and relevant EU law have supremacy over UK law during that time and it will also give effect to the Northern Ireland backstop.

JON MCLEOD: That Bill needs to be enacted with the normal intervals you would see in the passage of legislation and the normal committee treatment? What are we looking at there? That seems undeliverable before 29 March, or am I wrong?

MADDY THIMONT JACK: The thing about it is you can pass legislation in a day if you need to. Whether that gives Parliament enough time to suitably scrutinize the provisions of the Bill is another question. If MPs or Peers feel like they are not being given a chance to properly scrutinize, they could vote down that legislation. But you need to have that Bill in place before the Government can ratify the deal. The European Parliament will not ratify the deal until the UK has, because it is very concerned about the majority in the Commons. Essentially, in my view, even if the Commons approves May's deal in the next month, we are likely to require an extension to Article 50 to get the legislation and ratification process complete, in which case, if that was the situation, I think the EU would be likely to be quite amenable to that point because it would not want us to crash out of the EU just because we ran out of time, but if the Commons has not approved a deal and the UK requests an extension, they are likely to want to know what they are giving an extension for, and that is going to be more tricky, in my view.

JON MCLEOD: The UK Government will have to project a more credible commitment to legislate to the European Union, with some evidence, before we get to 29 March, so they get this extra time in order to complete the legislative instruments to get there?

MADDY THIMONT JACK: I definitely think so. Very quickly on the legislation for no deal, there are six Bills currently making their way through the House. The PM's spokesperson has said that all six are needed by 29 March if we have no deal. That is quite concerning as well because, again, you can speed up the processes of legislation, but you will limit scrutiny. There are about 600 statutory instruments that need to be passed. Around 350 have been introduced but only around 100 have completed their passage in the House. That is also quite a big concern, again on the no deal point.

JON MCLEOD: What we are talking about here, because we have been used to the Commons being the field of battle, in both those cases that you just cited the House of Lords becomes material to the process. Are you able to say anything about those statutory

instruments in relation to so-called fatal Motions or prayer Motions which I understand some of the Peers are starting to implement to obstruct no deal, or is that just another unicorn of the remainers?

MADDY THIMONT JACK: You could do that. The last time the Commons voted against a statutory instrument under the negative procedure was in 1979, so it is not very common at all, but, in my view, if MPs and Peers were concerned about the fact that we are heading for a no deal, they could try to target those SIs. Obviously, that is a really risky move because if you vote against the statutory instruments, given the legal default we are leaving on 29 March, we could be in a position where we leave and are even less prepared than we could have been. That is quite a big gamble. I am not convinced the Lords would want to frustrate the will of the Commons, so in terms of the legislation, I do not think they would vote down any Bills if the Commons was happy with it because they recognize the fact that they are not an elected chamber and they defer to the Commons' will.

JON MCLEOD: Got it. So it is do or die or do and drop out now. What better time could there be to turn for some legal advice? We are lucky to have with us here Charles Brasted, who is partner in public law at the international law firm Hogan Lovells and Charles is going to talk us through some of the legal and constitutional implications that we need to take in consideration in the next period. Charles?

CHARLES BRASTED: To pick up on that last point about SIs and the Lords, setting aside whether that is a mechanism for a political blocking of the whole Brexit, our experience is that, unsurprisingly, a lot of those SIs that are coming through have genuine material flaws in them, which Parliament is not able to pick up for itself necessarily as some of it is incredibly complex. Our clients and we are having to work very hard to try to spot those and to try to engage with Government and Parliament to sort them out. The mechanism for SIs is not helpful for getting amendments where there is a real flaw in how they implement policy. That is a big challenge for business of itself. That is SIs and I am happy to come back to it.

I wanted to rewind a bit to the beginning. In four years of talking about Brexit, the one thing I have learned is not to speculate about what is going to happen tomorrow, let alone next week or next year. What I have done is fall back on being a lawyer a little bit and tried to focus on some of the legal fundamentals. We have touched on a few of them, but I think they help to set the analytical framework for where we are.

There are perhaps three legal fundamentals that we probably all knew and we have been

reminded of some of them recently. The first is what the role of Parliament here? What we have learned, if we did not know it before is that Parliament can direct Government as to what to do and it can certainly stop Government from doing things, but certainly in the former case, it is a very blunt and anachronistic tool for micromanaging international negotiations. That is no surprise because it is a legislative and not an executive. That is what plays out in all of the shenanigans that we see and the way that Government and Parliament are interacting.

The second legal fundamental that we tend to forget is that, for 40 years, EU and UK law have gone hand-in-hand by definition, and we have known which is supreme. We are approaching in just under 60 days or so now a point where that ceases to be true unless there is a deal. That is important because we are faced with a situation where there will be two supreme bodies talking about the same stuff, each supreme in its own backyard and each powerless to override the other. We are approaching a point where it is possible for what is lawful and what is the position to be different under EU law than it is under UK law. That is quite important for some of the options we are considering.

The last fundamental, which I think everybody knows and is not that fundamental in a way but is pretty pertinent, is Article 50, and the fact that, however often you hear politicians saying that we should rule out a no deal exit, Article 50, as a matter of EU law, has automatic effect. On 29 March, we will cease to be a member unless something happens. When people talk about what needs to be done in order to get to Brexit on 29 March, the answer is nothing. We can stop right now and that is what will happen. There are problems with that, but it is not a problem of not being able to do Brexit.

What does that leave the UK with? It leaves the UK with only one unilateral power in relation to Article 50, and that is to revoke the Article 50 notice that we have given. That is the one thing it can do alone, or at least that is what the CJEU now tells us as a matter of EU law.

There are two really important caveats to that, and this may be a dream world that is never going to happen, but I think it is important for where we may get to. As a matter of EU law, we can revoke the Article 50 notice. That is now clear. The caveat in EU law is you can only do it if you no longer intend to leave the EU. You cannot use it as a tool for extension. You cannot do it with the expectation of coming back next year. It needs to be clear that you no longer intend to leave.

That feeds straight into the second caveat, which is we had to give notice in accordance with our own constitutional requirements; we would have to revoke it in accordance with

our own constitutional requirements. What does that mean in this case? It is not entirely clear after the *Miller* case, I think there is at least a pretty decent argument that you would need another Act of Parliament to authorize that revocation. That just identifies the limitations on what we - the UK - can do alone.

Put that in as the context for where Parliament is as of last night. We know that a majority is against no deal. That is what the Spelman resolution tells us and that is all it does. It tells us there is a very slim majority against no deal. We also know as of last night that there is a majority against the deal. Parliament has the power to stop the deal, but it has no power to stop the no deal, unless it directs Government to take the unilateral step of revocation. If you are looking at extremes, you now begin to see where those two options are. There is currently no parliamentary majority for any action that might help to avert no deal, for example the Cooper extension.

We are in a position where Parliament has been given the opportunity to micromanage the negotiations, has in part taken it, but has, again, provided no insight into what is achievable or acceptable, or what alternative will pass. It is worth noting in that regard that the Brady amendment, although it sounds as though it is providing some clarity as to what happens if there is a renegotiation, it provides none, partly as we have already said, because there is absolutely no specificity as to what sort of amendment is being sought, but also, even if an amendment is achieved, there is no binding commitment that it will be voted for. Those words are pretty much meaningless. As we have said, where we are in legal terms, putting all those things together, is back where we started in this conversation, which is Theresa May playing chicken with at least three sides simultaneously and coming back on 13/14 February probably in much the same position as we are today. That leads you to the question of, "If that's where we are, what are the next steps at that point?" We know what the easy options are: we just leave. What are the difficult options? We start looking again at whether we can extend? Yes, we probably can for a short period, but we would have to have a good reason for it because we will need to get the EU 27 to agree, or we can have a second referendum or we can have a general election, neither of which is achievable in the time before 29 March, or anything like it.

We are in a position of very narrow options for the UK to exercise power and for Parliament to do so. That is why I think, just speaking from my own experience, our clients and the businesses we work for have gone from regarding no deal as theoretical six months ago; a theoretical contingency for which you plan and, in some cases, you implement those plans because that is the only way you can be sure you can carry on. It has gone from a theoretical possibility to a very material probability. That is not to say it is going to happen

but there are very few businesses now which do not say, "We have to be ready for that". The advice from us on that is very much, as I started, you cannot speculate about exactly what is going to happen; you can only work with what you know. What you know is that very little of the domestic legislation that is needed to smooth the path has been passed. Some of it is flawed. Inevitably, not all of it will be in place in time in effective form. That is on the UK side, and the UK is a long way ahead of the EU 27, individually and collectively, in terms of no deal preparations. It is very easy to think that it is a UK problem and that the UK needs to sort out the position, but almost every business we look at is two ends of a supply chain or relationship. If you are the end in Italy, France or Germany, it is as problematic as if you are at the UK end of it. The EU 27 for a whole bunch of reasons, both political and institutional, are a long way behind the UK in terms of preparation. Businesses have not focused on that end as much as they need to. They now are, but it is very difficult to get traction there.

For businesses, you have to look inwards, work out what is important to you and what you can do about it for yourself, assuming that nobody else is going to do much to help you. What we are doing at the moment as lawyers is very much helping clients to deal with their own solutions as best they can while watching 600 or 700 SIs that do not quite work.

JON MCLEOD: Thank you, Charles. Can I ask you one follow-up question quickly which is about what we have homed in on, which is what might be called the functional extension of the Article 50 deadline, because, effectively, what you have pointed out very eloquently is that the ECJ ruling in relation to the reversibility of Article 50 is not much use in these circumstances because there is no political direction to pull out of Brexit. We are going through with Brexit, one hopes an orderly Brexit, so functionally to allow for that and to ensure there is legislative good order, a practical extension is needed. What is the consenting process for that extension? Is it the Council of Ministers? Is it all of the institutions in Europe? Who decides that is okay to do?

CHARLES BRASTED: What is required is unanimity of the 27, so that is effectively the Council. That is obviously difficult. We are not talking about a Commission decision. It is not something to be ratified by the rest. It is a negotiation with the 27 member states. That is probably one of the important things to remember about this whole process. Although our negotiating counterpart for the UK has been the Commission, that is only on its mandate. The Commission's job is actually quite limited and there are a whole bunch of areas, including no deal preparation and including whether you get an extension, which are a matter for each of the 27 individually to take a view on.

JON MCLEOD: The Council must support that idea and has to have a credible undertaking to legislate from the UK?

CHARLES BRASTED: Each member state will have to be satisfied that there is a good reason for an extension. The fact that the UK has not got its ducks in a row quickly enough is probably not going to be it, if there is no clarity as to where we will be two months later.

JON MCLEOD: There is no subsidiary Belgian dimension to this where you can have one of the three constituent parts of the Belgian state also deciding whether they want a word on the issue?

CHARLES BRASTED: Happily, on this one everybody thinks not.

JON MCLEOD: Good. It is always a relief to know that Belgian politics, which probably outweighs British politics as the most intractable, is not going to play a role. We will move over, thank you, Charles, to Anna Wallace, who is the director of political relations at PWC in the United Kingdom. Anna is going to talk to us a bit about the business implications and what she sees as being the next practical steps that businesses should be considering and any other relevant considerations in terms of the period ahead.

ANNA WALLACE: I do not know whether you are a Bill Murray fan - I certainly am - but there is a beautiful symmetry to last night's events coming just a few days before Groundhog Day on Saturday. If the Brexit groundhog were here, he would be telling us we have another six weeks of Brexit winter to come. As Sumeet rightly said, I think nothing has changed, to coin a phrase. For businesses that we work with that certainty they are so craving is still some way out of reach. Of course, for businesses this is quite challenging and frustrating because generally people in the C-Suite like to be in control of the information and the facts before they make any decisions. If Brexit has taught us anything, it is dealing with ambiguity is part of the new normal, and something that businesses have to adapt to. When I go out and talk to businesses, one of the things I say to them is, "Don't read the papers" because part of the challenge in trying to get behind Brexit is getting past those headlines, the blow-by-blow political skirmishes, which, of course, I suspect for most people on the phone and for people around this table is very interesting, but when it comes to business planning, it is not very helpful, because it can feel like there are lot of scenarios coming on and off the table. For businesses to be able to work out what is important for them to listen it and to engage with seriously is quite difficult.

For us, and I think this is the important point that Maddy made, there are really only two scenarios: we either leave with a deal, which is probably going to be some variation of this deal, or we leave without a deal. Clearly, as Charles alluded to, leaving with no deal is the most serious and the most impactful from a business point of view, and, again as Charles said, I think that businesses have now moved that no-deal scenario far further up their to-do list as all the talk about no deal preparation both in terms of government planning and in terms of the parliamentary challenges starts to become a far more realistic opportunity for them.

In terms of the regulated industries, a lot of them have been quite sophisticated at looking at no-deal planning, partly because regulators have expected them to do, partly because in a regulated industry it takes a much longer time to be able to protect your market position across Europe in the event of a no deal. We know that lots of businesses are really only engaging with Brexit planning, let alone no-deal Brexit planning, for the first time.

In terms of that Brexit planning, we think there are four stages. The first is you have to understand the scenarios. Let's keep it simple: deal or no deal. Secondly, you have to get a handle on your data. I would say if there are any people on the phone whose businesses have not looked at their Brexit planning, the first thing you have to do is get a handle on your data. One thing Brexit threw up for a lot of businesses is they simply did not know how many EU citizens they employed or when goods were crossing borders and how often, et cetera. Clearly, you need that in order to, stage three, make your plans, before you get on to stage four, implementing them.

As I said, sophisticated regulated industries are all at stage four and very well progressed in their implementations. Significant parts of the economy are just catching on to this for the first time and some are still only really at phase one, if not phase two or three. If I think of something like retail, for example, lots of people in that industry have been preoccupied with challenges on the high street around consumer confidence and then in the last few months warming up for the Christmas period and the January sales. Now they are turning their minds to what they might need to do in terms of the Brexit scenario. I guess for some of them this is where they are starting to run into some of those implementation challenges. Stockpiling for example, is something we have heard about in the context of medicines, but that also going for retailers. Some of those, particularly those who might ship in products from the Far East are running into a little thing called Chinese New Year. You might say, "It's fine, we are going to stockpile lots of goods in the next couple of months", but if you take out a good chunk of time for Chinese New Year and in the middle of that Easter, et cetera, all of a sudden those timeframes, those 58 days we have until 29 March, get shorter

and shorter and shorter.

Another example in terms of financial services and those industries that have been very well developed in their plans, most are now getting to the point where they have either got to tell people they are moving to other jurisdictions where they need to have substance or they are expecting people to bring forward plans to move because a no deal has become more likely and therefore you need to have your risk officer, or whatever it might be, on the ground in your new jurisdiction.

But, and this is another challenge we have seen in the world of business, lots of people in the business world either think, or perhaps even hope, that Brexit will not happen, or it is not going to happen now or when it does nothing is really going to change. We have heard of some businesses which have said to people, "You and your family have got to go now", and the person has pushed back and said, "Well, no, because it is not happening yet, and I will go when you absolutely need me to". Even though businesses have been very far along in their planning, some of them even now in the latter stages are still running into challenges.

We talk about the no-regrets actions that businesses should be taking in terms of their planning. We have been talking about those for some time now. I guess if people have not got to those yet, it is not too late to mitigate disruption. It is never too late, but the reality is for those only starting now the level of disruption on 29 March, if we were to leave without a deal, would be significant.

In terms of business planning, if nothing else, get a handle on your data. Only by having a handle on that data are you able to make informed decisions about risk. We have obviously now got the settlement scheme open. If nothing else, businesses should be talking to and reassuring EU citizens in their population, of course working on the assumption they know who they are and where they are, and, where necessary, helping those EU citizens go through the registration process. Those who are most advanced in their Brexit planning are starting to think on how they capitalize on some of the opportunities from Brexit.

In terms of a no deal, as I said, what do you need to know: no deal or a version of this deal. No deal is the biggest impact, so focus your resources and energies there. In terms of the milestones, I would only look to when Parliament passes the withdrawal deal, when the European Parliament passes the deal; otherwise all eyes on 29 March. I guess from a business point of view, particularly for those who might have invested, asking questions,

you cannot work on the basis of an extension of Article 50, although I agree with colleagues that is probably the next most likely outcome. You have to plan to be ready for 29 March. As one client characterized it to me, his no-deal planning is the insurance policy he hopes he never has to use.

JON MCLEOD: Great. Thank you for that, Anna. May I ask you one quick supplementary question about those preparation processes? What is the 30 March contingency that businesses should reach for from a practical supply chain perspective in order to keep the wheels of their businesses turning? A manufacturer turns up for work on the 30th and the widget needs to cross the border, who do they call? PwC or Charles at Hogan Lovells? What is the unblocking mechanism? Or do we anticipate, I do not know, a permissiveness which enables widgets to come in mysteriously like some kind of exciting contraband? How are we judging that mystical moment?

ANNA WALLACE: A well-planned business will have some person who is responsible for Brexit across all the different business functions and they will be their main point of contact. For many businesses, this should be embedded within their normal business continuity practice, so businesses which are likely to face a no-deal impact should know what those continuity plans would look like on the 30th overseen by a head of Brexit. In the widget example, what sorts of actions could they take now? One of those no-regret actions we are encouraging people to take is to get registered as an authorized economic trader. That will help facilitate the movement of goods at the border. Maddy might comment in more detail on this, but I think the reality is, if we did end up in a no deal, that Governments, both on this side of the Channel and for Europeans abroad, would seek to facilitate the transportation of goods across the border. Frankly, nobody wants a pile-up on the motorway outside of Dover which could very quickly happen. Nobody likes to talk about that of course because that is not the cliff-edge negotiating point that we all need.

JON MCLEOD: No, it is the dirty secret.

ANNA WALLACE: It is the dirty secret, exactly, and nowhere more dirty or secret than in the context of the Northern Ireland border and what might happen there. Of course, that is not something that businesses can or should be banking on.

JON MCLEOD: I am going to bring Sumeet in in a second but, Charles, on that point, as a matter of law, it is the morning of 30 March, are there any permissive declarations or statements that can be made by political leaders on either side of the equation from a trade

perspective and movement of goods around that can have any force or is that wing and a prayer territory?

CHARLES BRASTED: The legal position will be clear but that is very different from the practical position. The reality is that most countries and most businesses will not have in place the resources to materially restrict trade at borders immediately. There is a political choice which is really about enforcement for those countries with obvious border links to the UK about whether day one post Brexit is the day where they flex their muscle and show that they are going to take this seriously, or day one is the day actually recognizing that they do not have the border staff and, quite importantly, they probably do not have the systems to deal with it, but, actually, do they take advantage of that lack of preparedness and position that as a degree of facilitation on behaving sensibly. The legal position will be clear; the choice is a political one.

JON MCLEOD: About enforcement.

CHARLES BRASTED: That will be driven in part by politics and in part by the reality of resources. It is the same for businesses. Never mind the tariffs and how much they are, the real challenge will simply be: do you have the systems in place to retain and record all of the paperwork you are suddenly going to need? The answer is that even businesses that are very far advanced on their regulatory position post Brexit, most of them are quite a long way behind on their back-office function and things such as their accounting systems and whether they will record customs points in the correct way. That is the way it is.

JON MCLEOD: The real politick of this may be there is this fuzzy transition which is not about the letter of the law but about what works practically.

The words "the Labour Party" have not crossed our lips this morning, Sumeet, and I want to raise Her Majesty's loyal Opposition with you because it really was a bit of whimper yesterday from the official Opposition. Keir Starmer, who is extremely highly regarded, was sounding more like a squeaky dog's toy last night, left with nothing left to bite on. What does the Labour Party do next and how has it got it so badly wrong?

SUMEET DESAI: I am not sure it has got it that badly wrong, although Corbyn did look incredibly sheepish last night as he responded to Theresa May. He also agreed that he is now going to have talks with her. I believe they are going to happen this afternoon. We should not expect anything from these talks, but you will remember when she supposedly

reached out to get cross-party consensus a couple of weeks ago, he refused to meet her then, saying, "Well, until you rule out no deal, I am not going to meet you". What happened yesterday, he said, was because of the Spelman amendment, which is basically is Parliament saying they reject no deal, although we have talked about it being purely symbolic, he is saying, "Okay, things have changed; I can now meet you". It is more about everyone positioning themselves for the inevitable taking it to the brink. No one wants to be responsible for either crashing out with no deal or a delay to Brexit. Theresa May is saying the Europeans is the bogeyman. She would have also said it was because Jeremy Corbyn did not want to talk to her. He would have been thinking, "I want to look like I am being constructive", even though you cannot imagine those talks are going to be constructive in any way. There is a prize for Labour here if Corbyn basically said, "Our thing is we want a permanent customs union" and dare the remainers on the Tory side to join together for a softer Brexit. We have not really seen that strongly from them. Their amendment obviously failed. What Tories would be ready to walk over for that? Eight Tories voted against the Government yesterday. Are there more who would be prepared to stake everything for a softer Brexit if the real option or the only option on the other side was no deal? It is not clear that any more would join, or even those eight.

JON MCLEOD: Thank you for that. One thing which kind of disappeared for the time being was the jostling among leading Conservative figures about who felt they were the natural choice for the next leader of the Conservative Party because of course we have a Prime Minister who has said she is going to stand down. Has it gone away or just gone quiet? We have this outbreak of tribal unity but surely those people still harbor burning ambition.

SUMEET DESAI: You are absolutely right; it has not gone away. It might have gone away from the headlines, but I do not think anything that is happening in the Tory Party can be seen without it being looked at through the prism of a Tory leadership contest. Almost everyone thinks they are a candidate right now. You will see the various speeches they are making on non-Brexit related issues and trying to be out there as much as possible. That has not gone away and that is one of the things that is trapping Theresa May where she is. The remain side of her Cabinet realizes if she goes, the membership is probably going to elect someone who is a much harder Brexiteer. There is no obvious candidate who is going to come through and it makes it really difficult for them.

JON MCLEOD: Great, thank you for that. Maddy, I had a couple of quick follow-ups for you, if I may. The first one really related to the balance of the Government's legislative program, because we have already discussed the sheer weight of primary and secondary legislation that needs to be enacted really to get anywhere on Brexit, and we are way behind with our homework on that. It seems that there are other substantive pieces of legislation

that are about running the country which are really getting nowhere. I was struck by the late arrival of the Immigration Bill, for example, which seems to be a bit behind the mark. To what extent is the Government's capacity to govern being undermined for the balance of this session, their capacity to deliver against priorities? It would be interesting to hear about that.

MADDY THIMONT JACK: The first thing to say is Brexit is one thing but we have also to recognize the challenges of having a minority Government, which, even without Brexit, can constrain the Government's ability to implement its own policies because it is in a they are in a confidence-and-supply arrangement with the DUP, but you have to make concessions and, if you do not have a sure fire majority, it is harder to get legislation through. My colleague has done more work on this than I have, but there have been a similar number of Bills being passed in this session as previous sessions. It is just the content of them is different. For example, we had to pass emergency legislation relating to Northern Ireland because there is not an Executive there. The Government has also had to drop quite a few key policies it had in its manifesto because it knew it would not be able to get them through. It has been much smaller pieces of legislation and fewer high-profile new big government policies. It is a minority Government question as well as a Brexit question. What has been quite interesting more recently is the fact that the few pieces of non-Brexit primary legislation still in the House have definitely become a target for MPs who are trying to influence the Brexit process. Before Christmas, the Brexiteers, the ERG tabled amendments to the Offensive Weapons Bill, for example, to try to demonstrate to the Government that they could influence the Government's decisions or policy approaches if they wanted to. Also there was the high profile - although not necessarily that big an amendment to - the Finance Bill relating to the no deal from Yvette Cooper and a cross-party group of MPs. As I say, it is a two-strand thing where, to start with, it was the minority Government but more recently you can see that Brexit is starting to have quite a big impact.

JON MCLEOD: Remind us in relation to the current European Parliament, which at the end of all this will have to approve any agreement there comes between us, it sits for the final time in April; is that correct?

MADDY THIMONT JACK: 18 April. That is the last time this current version has to ratify the agreement. If we have to extend beyond that point, you would likely have to extend to after the sitting of the new Parliament, which would be in July.

JON MCLEOD: Right, and which would be a very different Parliament, of populists and nationalists.

MADDY THIMONT JACK: We would also have to resolve the question of what the UK does for that: do we hold elections for MEPs or do we appoint observers? There are quite a lot of questions about you would manage that situation as well.

JON MCLEOD: We could look forward to bringing Alternative für Deutschland on side with our Brexit recommendations. There are two minutes left and I am going to be completely unfair and ask each of you in a second, starting with Charles, what we will be faced with on 13 February. Before I do that, I did receive some cyber trolling from my colleague Jonathan Faull in Brussels, who knows about these things, and who has told me the withdrawal agreement is unopenable but not the political declaration, in his view, and that would be an area to focus on. Before we leave, Charles, what do you think we will see on the 13th. I know you do not like to make predictions.

CHARLES BRASTED: I think we will see a mild variation on what we have at the moment, which is no deal or Theresa May's deal with a slight variation. You are absolutely right that the political declaration can be re-opened. Realistically, the withdrawal agreement itself will not be, probably, but there is a big difference between reopening and adding to and an additional legal instrument seems like quite a plausible outcome. I just do not know what the content of that will be.

JON MCLEOD: Got that. Anna: deal or no deal?

ANNA WALLACE: Groundhog Day. I suspect we will largely be where we are and I fear this will keep going right up to the wire well into March, right up to an extension if we get one.

JON MCLEOD: I am grateful. Sumeet?

SUMEET DESAI: I think that morning of the 13th will look quite like yesterday morning.

JON MCLEOD: Again and again. And Maddy?

MADDY THIMONT JACK: I am not going to say anything much different. I do not think we are going to be in a different position, and I expect that we will be talking about very similar amendments to the ones that we talked about yesterday. Just to be a bit more specific, I think we are going to be talking about whether Parliament is going to use

interesting procedures to take control of the process, as we were speculating yesterday morning.

JON MCLEOD: Thank you, Maddy. And thank you to Sumeet Desai, partner in Brunswick Group, to Maddy Thimont Jack from the Brexit team at the Institute for Government, Charles Brasted, partner in public law at the international law firm Hogan Lovells and Anna Wallace, director of political relations at PwC in the UK. This is Jon McLeod saying goodbye.