

COMMENT

What Future for May's Brexit 'Renegotiation'?

Anthony Salamone | 5 February 2019



[© 2018 European Union](#)

As Brexit day draws ever closer, the present dysfunctional state of UK politics becomes ever more acute. The government remains weak and the opposition unclear, while challenges mount and time is short. The reality of the timetable must now loom large – the UK will leave the EU at the end of next month, deal or no deal, unless something else is done.

By all accounts, the UK is simply not ready for Brexit day. A volume of legislation must still be passed, many businesses are underprepared and society as a whole is not equipped, particularly for the extraordinary demands of a no-deal Brexit. Much appears to be predicated on the continuity provided by the transition period, but that would evaporate in a no-deal scenario.

In this surreal context, Theresa May has embarked upon the 'renegotiation' of the UK's Brexit deal – in particular, the Irish backstop. However, this strategy is questionable and hampered by the lack of time remaining. Present circumstances increasingly point towards a request to extend the Article 50 process – whether for shorter or longer, under conditions to be determined. Parliamentarians in Westminster should not assume however that securing an extension to Article 50 would be a perfunctory exercise. The EU27 must agree to an extension, and their support cannot be guaranteed.

Brexit politics in the UK parliament

The Brexit votes in the House of Commons on 29 January marked a significant turning point in at least one respect. By giving government support to the [Brady amendment](#) on replacing the Irish backstop, Theresa May effectively disowned her own Brexit deal. As EU chief negotiator [Michel Barnier](#) and Tánaiste [Simon Coveney](#) both noted in the aftermath, the prime minister has now, remarkably, called for the agreement she negotiated to be renegotiated.

This bizarre situation epitomises the chaotic nature of Brexit, and does not reflect well on the UK's international reputation. Confusion and uncertainty look set to continue in the weeks ahead. The prospects of a general election or another EU referendum have somewhat receded for now, but either could return to centre stage quickly.

Although Theresa May momentarily united the Conservative party around her new Brexit goal, she is once more faced with a seemingly undeliverable challenge – to renegotiate the Irish backstop with the EU27 and to have her revised deal approved by parliament in relatively short order. All of the variables are unfavourable for the prime minister: the time available to negotiate is minimal; the EU27 have already rebuffed calls to renegotiate the deal; Brexiteer backbenchers cannot be relied upon to vote for her (new) deal, even if she somehow secures major concessions.

Irish backstop based on principles

The Irish backstop is underpinned by thoroughly logical reasoning – it is an insurance policy to avoid a hard border on the island of Ireland in case no other suitable arrangements can be devised in time. Its aim is to provide the legal certainty made necessary by the history and circumstances of Northern Ireland. The stated ambition of both sides is for the backstop not to be used (although any form of EU-UK customs relationship might ultimately engage NI-specific alignment with EU law).

The EU27 have already committed in the EU-UK [political declaration](#) and in the EU's [letter](#) giving reassurances before the first Commons meaningful vote that, if the backstop enters into force, it should be replaced with a permanent solution as soon as possible. The EU would also undoubtedly point out to MPs that the UK government agreed to the principle of the backstop in the EU-UK joint report of December 2017, subsequently to its details in March and November 2018.

Both the EU27 and the UK agreed that shared commitments to peace and stability in Northern Ireland required specific attention as part of the UK's withdrawal from the EU. The backstop as it stands now is a sensible compromise intended to fulfil those joint commitments under the Good Friday (Belfast) Agreement. The main counterproposals discussed in recent days in Westminster are incompatible with that spirit. A right for the UK to withdraw from the backstop or a time limit to it would negate its purpose as an insurance policy. Replacing the legal backstop with political hopes is a non sequitur.

Ill-fated renegotiation to come

Given that the backstop is the product of months of negotiation, all other alternatives were already considered, and it is based on a commitment to values, what can Theresa May genuinely hope to renegotiate about the backstop? In her [Belfast speech](#) today, the prime minister reiterated the UK government's commitment to no hard border and accepted once again the principle of a backstop. In truth, the concessions which Theresa May will ostensibly now seek from the EU27 are only likely to weaken legal guarantees to avoid a hard border, not strengthen them.

While British politics continues with its Brexit introspection, the key question remains, as ever: how will the EU respond? The EU27 have remained resolute in the view, as [articulated](#) by European Council President Donald Tusk, that the deal is done and will not be renegotiated, including the backstop. The rest of the EU has supported Ireland on the question of the border throughout the Brexit process. Following the Commons votes, German Foreign Minister Heiko Maas reiterated that view clearly, [saying that](#) 'Germany and the entire European Union will stand

by Ireland on the backstop. We will not allow Ireland to be isolated on this issue.' Reports [suggest](#) that the EU27 would be guided by Dublin on whether to consider or accept any compromise proposals on the backstop, if the UK puts any forward.

Having set herself the task, the Prime Minister will in reality find it quite difficult to renegotiate her deal. The EU27 would certainly prefer a deal to no deal, and they may well agree some amendments to the political declaration – but they will still require the legal certainty of the backstop, regardless of the ambitions for the future relationship. Moreover, even if the EU were moved to compromise further, could Theresa May truly guarantee that the new deal would pass the Commons – and not that Brexiteers would still be unsatisfied and demand even more? Absent dramatic change, May's renegotiation seems doomed before it begins, and the UK will be back where it started – at the edge of the cliff, looking down.