

Pie in the sky and the death of ‘cakeism’: towards the brink in EU-UK negotiations

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The negotiations between the United Kingdom (UK) and the European Union (EU) have entered the next ‘hot’ phase. The EU is pushing for an agreement on the Withdrawal Agreement (WA) to be ready to be signed off in principle at the June European Council to create certainty on transition and the process to follow. But domestic and EU pressures on Theresa May imply both a hard Brexit and the Irish border backstop. The only way she can get this through parliament is by taking the UK to the brink of no deal.

Roadblocks ahead

There are sizable roadblocks on the UK side that prevent an early agreement. There is a renewed debate on the Customs Union after the transition, including voices in her party who believe that a soft Brexit is essential to minimise economic harm. But this is unacceptable to the Brexiteers: it takes away the last (unrealistic) economic promise of Brexit – the freedom to make global trade deals – and thus makes a mockery of the idea of regaining control.

A further crucial stumbling block is the backstop on the Northern Ireland border, with both sides agreeing that it must remain frictionless without physical infrastructure. But the UK has struggled to come up with a solution that also meets its red lines, exiting the Customs Union and the Single Market. Consequently, the EU27, led by Dublin, insist on a backstop that implies a customs border in the Irish Sea unless realistic alternatives are found. However, the Democratic Unionist Party (DUP), on whose votes Theresa May relies for her parliamentary majority, adamantly opposes this.

An unresolved issue that could stir a hornet’s nest among Brexiteers is a possible extension of the transition period beyond December 2020. It is virtually inconceivable to conclude a meaningful long-term deal in less than two years, but legally it is practically impossible to extend the transition period unless there is a provision for it in the WA. In the eyes of hard Brexiteers, a further year or even two is unbearable for two reasons. First, it maintains the “vassal state” status for even longer. Second, if extending the transition beyond the next General Election, it could lead to a shift in direction towards a Norway+ solution.

The carrot and the stick

With these roadblocks ahead, the Prime Minister depends on a very uncertain majority in the House of Commons. But without the WA, there is no transition: the cliff edge looms. Despite the absence of a majority for any type of Brexit, by autumn, Westminster must agree to the WA to avoid the ‘no deal’ scenario.

To succeed, Mrs May will have to try to please all sides as far as possible while respecting the EU's red lines. The Brexiteers will hence get the exit from the Customs Union and the Single Market, including exiting EU jurisdiction. The DUP will have to live with the backstop, sweetened by an (undeliverable) ‘iron-clad’ guarantee from the government that there will be no customs border in the Irish Sea and, as before, some more funding for Northern Ireland. To the

soft Brexiteers, the government will promise the closest possible economic partnership that is almost as good as being inside, although this will stretch credulity. Even the hard Brexiteers now realise that ‘cakeism’ – the benefits of integration without the obligations – is not on offer.

But all this will not be enough to get crucial votes through the House of Commons. She will also have to put her fate on the line to stoke fears of a Corbyn government, play the migration card strongly to put pressure on a significant part of the Labour Party, and portray future security, justice and research relationships as being contingent on the WA agreement.

To the edge of the cliff and beyond?

In the end, the most effective card she has is a version of the classic game-theory concept of ‘chicken’. Chicken implies making mutual destruction inevitable unless the other side concedes. If time becomes too short to continue negotiating, the cliff edge looms. The UK is then bound to leave the EU in March 2019 without any deal at all. In this case, a vote against the WA would threaten to bring down the government and have a devastating effect on the country and the political futures of MPs.

All this implies that Theresa May must create a crisis to get the WA through and she can best do that by pushing the decisive vote as late in the year as possible. There is no resolution likely before the Conservative Party conference (30.9.-3.10.), where Theresa May will have to demonstrate her defence of the UK red lines. The critical EU moment is likely to be the 18-19 October Summit, but Theresa May might even be tempted to push it beyond that. Being so late in the year is risky: if she fails to scare enough MPs into a vote for the WA, the cliff edge looms for the country and her career.

So, at that point, she must have the hard Brexiteers on board who are happy to risk ‘no deal’ (with the certainty of a hard Brexit that it implies) rather than concede on their red lines. The proponents of a soft Brexit, driven by a desire to reduce economic harm rather than by ideology, are more likely to concede when faced with the cliff edge.

It only gets harder in the long run

Even if Theresa May succeeds, it will not end the UK’s difficulties. The clock will still be ticking, so getting a WA merely postpones the cliff edge rather than resolving the underlying dilemma: the UK has to choose between minimising economic harm (a Norway+ deal) or respecting the Brexiteer red lines at significant economic cost (a Canada-style agreement). The latter would inevitably be a ‘bad’ deal: the first trade agreement with no gains from increased trade but only costs from disintegration, likely to omit areas of vital UK interest such as financial services, while including a list of impossible demands from the EU27, e.g. on governance.

So, a Canada-style trade agreement might well be pie-in-the-sky. But this could be an opportunity: the transition period could be the time needed for the domestic political system to overcome the resistance of the hard Brexiteers, so that the final outcome is a Norway+ deal, minimising long-term harm for both sides. Currently, at this stage in the negotiations, the best that can be done is to keep this door open for the transition period.

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