The Brexit negotiations: Key questions answered

As the Brexit negotiations enter the final phase, it can be hard to cut through all the political rhetoric and journalistic hyperbole to know what's really going on. **Brian Mooney**, *editor of the* Resistance *newsletter provides clear, objective, evidence-based answers to the most important questions.*

Q: Is there really an impasse in the negotiations?

In the midst of so much rhetoric on both sides, it's hard to know. The EU has acted tough to make leaving look difficult and deter others. Although the EU's chief Brexit negotiator Michel Barnier has ruled out seeking early nomination for Commission President, he could well become a 'compromise candidate' later on. Boosting his standing with EU decision-makers might be one reason why he is championing the EU so aggressively.

After being seen to concede too easily, Theresa May spent the summer talking up no-deal, but this might just be for show. At the same time, several public notices have been released highlighting the problems that would be associated with a no-deal outcome.

Apart from the Northern Ireland backstop (see below), the key area seems to be governance – administration of whatever Withdrawal Agreement is agreed. The EU demand for the European Court of Justice to rule on disputes could be dropped, as in principle a lighter touch approach has been agreed for the future relationship.

Q: What is the Northern Ireland 'backstop', and is it essential to a deal?

The 'backstop' is also known as the 'Protocol for Ireland/Northern Ireland' in the EU's draft Withdrawal Agreement. It has been justified as an 'insurance policy' to keep trade flowing *after* the transition period (when stop-gap arrangements are due to run from 29 March 2019 to 31 December 2020) in case a new permanent deal is not ready in time.

It would effectively keep Northern Ireland in the EU for trade in goods, some tax matters, and agriculture. This would create a border within the UK unless the entire UK was bound by the same rates and regulations.

The DUP's Brexit spokesman, Sammy Wilson MP, feels that the backstop 'push' is more about keeping the entire UK in the Single Market and a customs union.

The EU says a backstop is needed, but the logic is strange. For a start, the proposal relates to the 'Future Relationship' period due to begin in 2021. So why insist it is included in the Withdrawal Agreement, which is supposed to cover a transition period of up to 2020? This is particularly contradictory given that the EU insists that the UK cannot negotiate other 'Future Relationship' essentials such as a Free Trade Agreement until it has left the EU.

Backstop supporters insist that it's essential to support the 1998 Belfast Agreement, aka the Good Friday Agreement. However, the EU hardly features at all in that agreement. Furthermore, Irish foreign secretary Simon Coveney has denied claims that violence will be reignited by a no-deal situation that would clearly be without any backstop.

The High Court heard and rejected the argument that Brexit would undermine the Belfast Agreement. Both Labour and the Conservatives reject a hard GB/NI border. BBC Europe Editor Katya Adler suspects that the wording might be made loose to

secure agreement. News agency Bloomberg has speculated that the EU's 'support' for the Republic via the backstop may be linked to a demand to end its low tax rates, particularly for the Digital Single Market.

Q: How likely is no-deal now?

Both sides want a deal. The draft Withdrawal Agreement is 80%+ agreed (Coveney says 90%), with the joint political declaration set to be agreed shortly. *Guardian* Economics Editor Larry Elliott cited a consensus that a deal would be 90% likely. With European Parliament elections in May and anti-EU parties making ground, EU leaders have every incentive to avoid disruption.

Any deal must be agreed by at least 20 of the 27 EU member states (with not less than 65% of the EU's population in them). It is unlikely that individual countries would veto a deal if the EU leadership is in favour. Austrian foreign secretary Karin Kneissl noted a rare show of EU unity on the Brexit issue even if EU leaders are poles apart on others.

Q: How consistent is the EU's position?

'Not very' is the answer. The EU has cited 'the integrity of the Single Market' to insist that the UK accepts free movement of services, goods, capital and labour. This is bunk – for several reasons. Firstly, the EU itself admits that all non-members get free movement of capital. Secondly, any country with a free trade agreement (e.g. South Korea) gets a bespoke deal on goods and services. Moreover, a 'single market' in services doesn't truly exist yet within the EU. Finally, as Professor Anand Menon notes, the supposed 'integrity' of the Single Market "is obviously negotiable – as the cases of Switzerland and Ukraine illustrate all too clearly – for non-

member states.” Indeed, the EU’s backstop proposal to give Northern Ireland selective access for exports of goods (but not services) is exactly the cherry-picking that the EU would apparently object to the wider UK having!

Q: What does the UK have in its favour?

The EU must obey WTO rules. This gives us some safeguards. Later WTO agreements (e.g. TBT, SPS) would trump the EU’s ability to use its Customs Union to discriminate against the UK. Any attempt to stop the export of goods fully compliant with EU rules could be challenged at the WTO (with fast-track procedure).

The EU already has a ‘common veterinary space’ with Switzerland. If the EU tried to insist upon British livestock and food items being rerouted to Border Inspection Posts when they were already similarly compliant to the ‘common veterinary space’ standards, the WTO could rule it an unnecessary restriction on trade – and compel the EU to accept reasonable alternative control measures.

Manufacturers are concerned about component ‘rules of origin’ that can complicate exporting. The UK has signed the PEM Convention and the Barcelona Declaration enabling free, tariff-free circulation within the EU, EFTA and Mediterranean countries. (The latter also commits to respect the UN Charter and non-interference in other countries’ internal affairs, which would mean dropping the intrusive Northern Ireland backstop proposal.)

As the UK is a signatory to these agreements in its own right, there is evidence that they would not lapse simply because we’ve left the EU. There is also a legal argument that the UK’s status as a signatory to the EEA Agreement would also not lapse upon Brexiting, although this is more controversial and contrary to both the UK government’s and EU’s current legal

position. This option should not be ruled out, however. It would keep trade flowing short-term and give breathing space to our incompetent government. Avoiding an immediate economic disaster would disarm those Remainers still looking to push us back into the EU at the earliest opportunity.