

CRUNCH TIME

By Professor Alex de Ruyter

News that Brexit Secretary, Dominic Raab, flew to Brussels yesterday for an impromptu meeting with EU chief negotiator, Michel Barnier to elucidate the UK government's difficulties with regards to the proposed "back-stop" agreement for Northern Ireland underlines just what a critical stage the negotiations are now at.

In the lead up to the European Council meeting of national government foreign ministers this week (for which Theresa May has been invited to give a talk over dinner on Wednesday evening) has had pundits eagerly anticipating that a "deal" would be on the table, enabling a follow-up meeting in November to be about finishing off "loose ends". However, the "deal" that appears to have been put on the table is problematic for several reasons, hence Raab's meeting yesterday to buy more time.

The latest proposal from the UK government essentially is to keep the whole of the UK in the EU Customs Union for a "temporary" period until such a point where other (technological) solutions to the problem of a hard border in Northern Ireland become viable. The proposal would also, in effect, keep Northern Ireland in the Single Market for goods (subject to approval from a NI Assembly that hasn't sat for over 18 months now), so as to uphold the Good Friday Agreement and adhere to its pledge to protect the all-Ireland economy.

This has led to a backlash from pro-Brexit MPs such as those in the European Research Group, chaired by Jacob Rees-Mogg. For them, the Government's proposals risk the UK being kept in a customs union with the EU indefinitely, which would undermine the "clean" (hard) Brexit they are seeking, whereby the UK would only enter into negotiating a free trade agreement with the EU, plus a number of ad-hoc additions. This would, in essence, be similar to the arrangements that Canada has with the EU with additional bolt-ons. Equally, for the DUP, the proposals add to their fears that NI in effect will diverge away from the rest of the UK.

The big question for the Government, of course, is how many of these MPs would be prepared to vote against a deal (or block the Government's budget, as the DUP have threatened to do – a move which could effectively act as a vote of No Confidence, and might ultimately result in the fall of the Government).

From the EU's perspective, the suggestion that any continued membership of the Customs Union should be temporary (that is, for a specific, determinate length of time) is deeply problematic. This is because, an agreement would have to mean a legal guarantee to uphold the provision of no hard border for its entirety. An analogy here would be that of the UK government trying to sell you a health insurance policy. The advertising literature (analogous to the "joint progress report" signed by the British government) stated that the cover would last for your lifetime. When you come to read the T&Cs (the legal Withdrawal Agreement that is to be signed, per Article 50 of the Lisbon Treaty), however, the policy states that it only covers the next 5 years. It is unsurprising that you might reconsider whether you want to take out the policy at all!

So also for the EU – at this point, no agreement from them has been forthcoming on accepting such a demand from the UK Government. Notably, Michel Barnier tweeted after the meeting to state that "[w]e met today @DominicRaab and UK negotiating team. Despite intense efforts, *some key issues are still open, including the backstop for IE/NI to avoid a hard border*" (our emphasis).

We are now left with a situation whereby the November meeting is the last chance for a deal to be made under the current Article 50 timetable. For their part, EU representatives have been reported as increasingly regarding the November meeting as one whereby they review their own preparations for a "No Deal" scenario. This would allow a November meeting to continue to take place, in case additional progress is made by the UK and EU negotiating teams in the interim. Ireland's ambassador to the UK, Adrian O'Neill, speaking on BBC Radio 4's Westminster Hour suggested that events in Brussels yesterday were a "setback" and meant a No-Deal situation was now more likely, and so:

“Time is running out, there is no doubt about that. In all member states, preparation for all eventualities are ramping up quite significantly.”

We are now left with the highly uncertain scenario that Theresa May can secure enough support within Parliament for any kind of deal (with the Parliamentary arithmetic suggesting that the Government will in all likelihood require the support of 20 or so Labour MPs to push a deal through Parliament).

It would appear indeed that “Crunch Time” has now arrived.