

Unblocking the Irish backstop

Blog post by Chief Economist Gregor Irwin, 26 July 2018

The Irish border has become a major obstacle in the Brexit negotiations. With time running short, the probability of a no-deal Brexit - and the chaos this would imply - is increasing. So what are the potential solutions?

Let's start with what is agreed. The EU and the UK want to avoid a hard border in Ireland. The bar has been set high, with a UK minister telling the parliament this means no new "physical infrastructure or related checks and controls". The two sides also agree that this should be hard-wired into the withdrawal treaty in the form of a "backstop" protocol that would apply until a solution is found as part of the future relationship.

The problem is the two sides have very different conceptions for the backstop. The EU says it should keep Northern Ireland (NI) inside the EU's customs territory and regulatory perimeter for goods, if all else fails. The UK objects to this as it would require a customs and regulatory border between NI and the rest of the UK. Instead, the UK says the backstop should, if necessary, keep the whole of the UK inside the EU's customs territory and regulatory perimeter for goods. The EU objects to that, because it could pre-empt a final deal on the future relationship, which can only be negotiated after the UK leaves the EU.

The EU is legally constrained because the EU treaties mean the processes for ratifying a withdrawal treaty (Article 50) and the future relationship (Article 218) are different, with individual member states having more power in the latter case. This is not just legal hair-splitting.

The UK government is politically constrained, because even if it was tempted to give way, it would almost certainly lose the backing of the Democratic Unionist Party (DUP), on which it depends.

The fundamental problem is sequencing. The EU needs a guarantee now but cannot allow itself to be unduly constrained later. The UK would prefer to resolve it through the future relationship, and believes this is possible, but that confidence is not shared by the EU.

How, then, might the backstop problem be unblocked? Here are three ideas, one of which is new.

Conjoined twins. The basic idea, explained by Peter Foster in the [Daily Telegraph](#), is that the UK signs up to the EU model for a NI-only backstop, but with a commitment that immediately after Brexit, the EU would agree to a similar backstop for the rest of the UK.

The problem is that the second back-stop would require agreement under Article 218, which would take many months, with the outcome not guaranteed. It would require enormous trust on the part of the UK government and its DUP backers.

A hybrid approach. This idea, proposed by Chris Giles in the [Financial Times](#), would see the whole UK staying in the EU's customs territory, if necessary, but with only NI staying in the regulatory perimeter for goods (and the EU's VAT system).

One problem is that this would still involve regulatory checks on goods moving across the Irish Sea. But the British prime minister, Theresa May, notably omitted to mention regulatory checks when she told an audience in July that the UK government could not accept a customs border down the Irish Sea.

Another problem is that this still pre-empts the future relationship. But arguably it does so in a way that is not precedent breaking (Turkey has a customs union with the EU) and is more politically acceptable to the EU (it does not imply unfettered UK-wide access to the single market for goods). It would involve compromise by both sides. The biggest problem could be the DUP, which is not known for its willingness to compromise.

A unilateral revocation clause. This new idea would involve agreeing a UK-wide backstop, but with the EU having the right to revoke it unilaterally at any point in future.

This could get around the EU's legal problem, as the UK could be stopped from forcing the backstop upon the EU indefinitely. The UK should be relaxed about conceding this, as it has long argued the border issue should be dealt with later, in the context of the future relationship.

The problem is most likely to be the Irish government, which would need to trust that the rest of the EU would never revoke the backstop against their will. It would be up to the EU to decide a legally satisfactory process for revoking the backstop, but one based on unanimity would give the Irish the reassurance they need.

None of these ideas are perfect. But something must give in the negotiation if it is to reach a successful conclusion. The approaches described here suggest a solution might just be possible, with a bit of creativity and assuming there is the political will.