



The Centre for
Cross Border Studies

MEDIA WATCH

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Brexit: Slow Death of Chequers, or a Cliff Hanger Deal?

The Chequers White Paper has been called a zombie. Yet Theresa May ▼ and her negotiating team are grimly insisting it lives.

So, blood-stained and ghoulish, it will stomp through the Tory Party conference at the end of the month.

If it survives it may even take on Lazarus-like qualities - or it could just as easily crumple into smoke and sulphur.

"There's almost a contest over who shouts the loudest that Chequers is dead," one senior Irish source said.

In July, Theresa May ▼ wrote to grassroots Conservative Associations urging members to give Chequers a fair hearing, and asking local chairmen to act as advocates for it through the summer.

That has not worked.

A survey last week by ConservativeHome found that 69.3% of Tory voters regarded Chequers as bad for Britain, while 68.8% said they would not support it, both figures marginally up compared to August.

ConservativeHome also found that 35% of Tory grassroots members want Boris Johnson ▼ as leader, up from 29% in August (although the shires may now temper their enthusiasm with the news of Mr Johnson's impending divorce).

On cue, Lynton Crosby, the Australian political strategist, and Mr Johnson are reportedly plotting with the hardline European Research Group to overthrow the Prime Minister (and the White Paper) in order to have the former foreign secretary installed at Number 10.

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Mr Johnson himself, who on Monday accused Theresa May ▼ of planting a white flag on the Brexit tank, is reportedly preparing a 1,000-strong "Chuck Chequers" rally at the conference.

David Davis, the former Brexit Secretary who resigned over Chequers, is also expected to launch a rival proposal for a Canada-style free-trade agreement ahead of the party conference.

MPs on the House of Commons European Scrutiny Committee tried to kill it off completely on Wednesday when they grilled Brexit Secretary Dominic Raab ▼ and Olly Robbins, Theresa May ▼ 's Europe Advisor and the civil servant reputed to be the Chequers mastermind.

Successive MPs circled and lunged, goading the pair into admitting it was dead.

Bill Cash MP wanted to know if the White Paper had "in any shape or form" been shared with EU institutions or member states ahead of Chequers.

Richard Drax MP wanted to know why a Canada-style trade deal, now the darling of Brexiteers, was not put before the cabinet instead of the White Paper, given the wholesale opposition to it from Brexiteers, Remainers and the EU.

Mr Robbins, with admirable conviction, insisted: "Ministers remain behind the White Paper because they believe it is sensible package."

As if to ram home the widespread Brexiteer belief that he is not to be trusted, Mr Drax said: "Do you believe leaving the EU is the right thing? Personally, in your heart? There is no part of you that wants to keep the country attached to the EU?"

Mr Robbins replied with what one suspects was a carefully prepared response: "There is no part of my personal views that will ever play a role in how I serve the government of the day."

Given the rapidly diminishing time frame, and growing hysteria over Chequers, is there any remote possibility the next eight to ten weeks can avoid the "no-deal" scenario?

Dublin is certainly gloomy.

Senior sources say there is little chance of any move from London on the still bitterly disputed Irish backstop this side of the Tory Party conference starting on 30 September.

Even if Chequers survives, the backstop is agreed, and the Withdrawal Agreement signed in mid-November - now the new deadline - there is a high risk it will not command a majority in parliament.

"There is a genuine concern," says a senior Irish figure, "that any deal put on the table - however good or bad - might not be capable of securing agreement in London because of the weird dynamic there.

"Chequers was meant to be the moment in which that changed, or at least brought things under control, where at least you had the semblance of a single UK position.

"That has not worked."

The problem for the Irish Government is that the border and the backstop are being caught up in the mounting hostility towards Chequers, because a core objective of the White Paper is avoiding a hard border by keeping the UK close to the EU's customs and regulatory sphere.

As such, the venom with which MPs on the European Scrutiny Committee referred to the Irish question was palpable.

Kate Hoey MP, the Labour Party Leave supporter, described the border as "a tiny" issue that had been manipulated by people who wanted to use it "as a stick."

She demanded to know if Olly Robbins had told his interlocutors on the EU and Irish side that it was "all nonsense".

Bill Cash asked Dominic Raab if it was "stupid" of the British government to have agreed to the backstop in the Joint Report last December.

The Secretary of State politely said: "In December we signed up to that commitment. We've got to be true to that."

Given the climate, the odds on a successful autumn look shaky indeed.

The UK must agree to the backstop, as well as other outstanding issues, in order to conclude the Withdrawal Agreement.

However, the Withdrawal Agreement will be accompanied by a political declaration on the post-divorce relationship, and that will be equally fraught (indeed, Chequers is all about the future relationship).

British ministers are now insisting that both hang together - if London isn't happy with the political declaration on the future relationship, then all bets are off on the divorce.

"The different elements of this package are one deal, one bargain," the Brexit Secretary told the committee. "There's no deal until you've got the whole deal. There's no deal until you've got linkage between the two."

A lot of focus will now fall on the political declaration. The UK may want it to be highly detailed, spelling out exactly how close the trading relationship will be.

The EU will not want to hand over a cut and dried trade deal in template form.

And many suspect that they will feel constrained by the UK's own red lines to offer Britain only a Canada-style trade deal with a few extras thrown in (so called Canada-plus-plus).

Speaking at a British-Irish Chambers of Commerce event in Dublin on Thursday night, the former UK ambassador Ivan Rogers warned against this.

This, he said, "will merely set up further conflict and mutual alienation down the line, and has the potential to deepen the fracture with the UK, as we may have no choice but to take an economic course which will turn cross-channel relations more adversarial."

None of that, he added, would be good for Ireland.

So, where do things stand on the backstop?

The European Commission proposed its version of the backstop in February.

The draft Protocol describes "a common regulatory area comprising the [European] Union and... Northern Ireland... an area without internal borders in which the free movement of goods is ensured and North-Southcooperation protected... The territory of Northern Ireland..., shall be considered to be part of the customs territory of the Union."

That, of course, was rejected by Theresa May, ▼ and remains unacceptable to the UK.

The British offer, published on 7 June, describes a Temporary Customs Arrangement in which the whole of the UK, and not just Northern Ireland, would remain in the customs union during the two-year transition period (the so-called UK-wide backstop).

However, it failed to address regulatory checks, and this is one of the reasons it has been rejected by the EU.

On Monday, Michel Barnier told the House of Commons Brexit Committee: "It is impossible...to distinguish between customs checks and other regulatory checks. The two kinds of checks are intrinsically linked in the technical physical organisation of what happens when things are checked on that border for the single market.

"That is why the British solutions mooted, such as a temporary customs arrangement, which suggests such a distinction between customs checks and regulatory checks, would turn out to be impossible, technically speaking, for us to implement."

So both sides are at a stand-off.

One suggestion has been that the political declaration might provide enough cover for Theresa May ▼ to win over DUP support for the backstop.

However, senior British officials say this will not be enough.

London, it appears, is holding out on a UK-wide backstop. If a text is to be agreed in time for mid-November, they insist, it must look like a compromise, not a tweak.

Efforts are being made to bridge the gap.

One British suggestion, which has not been formally tabled, is indeed, a "bridge".

At the end of the two-year transition period, instead of the backstop kicking in, there would be a "bridge" to the point at which the new free-trade agreement is signed.

During the bridge the UK as a whole would remain in the customs union and single market for goods.

The argument on the British side is that, if the backstop kicked in hard, there could be a scenario where passengers on the Stranraer-Larne ferry would have ham sandwiches confiscated at Larne Port as they might not comply with EU food safety rules.

EU sources dismiss this notion.

"It's an eye-catching example about how awful things would be if the backstop took effect," says one source close to the negotiations.

"But it's hard to believe in practice we would be operating at that level of micro-scrutiny and management."

The Irish Government is sanguine about a UK-wide backstop, and even the idea of a bridge, as it would alleviate the border dilemma, and keep East-West trade flowing.

But senior sources acknowledge that the EU Task Force is opposed since it would effectively mean not one but two transitions.

One transition has been just about acceptable to Brussels on the basis that it would mean EU businesses and consumers would only have to deal with one change, ie at the end of the transition.

"It creates quite a bastardised structure," says the source.

"You would have two hops before you get to some as of yet unspecified end state. That goes against what people argued about, that you have to certainty, and manage only one set of changes to the rules."

For his part, Mr Barnier is attempting to bridge the gap through the mantra of "de-dramatisation."

The view is that the requisite checks along the Irish Sea that would accompany the backstop - should it be needed - need not violate the constitutional status of Northern Ireland and the UK.

On Monday Mr Barnier repeated: "We are ready to simplify these checks, to have them carried out at a number of different places and have checks, thanks to technical means, which could take different forms."

In order to nudge the UK, and unionists, in this direction, Mr Barnier asked Dominic Raab to provide data on Northern Ireland-Great Britain trade flows.

The idea is that if more was known about what goods there are, then there could be creativity about how intrusive the checks might need to be.

The reason there would have to be checks along the Irish Sea in the event of the backstop is that goods entering Northern Ireland from Great Britain could then circulate to the south, and beyond that into the EU single market, since there is no hard border.

This remains deeply problematic for the UK.

At Monday's hearing, hardline Brexiteer Andrea Jenkyns MP asked why the EU would not agree to look at a WTO exemption which, she said, would give "greater flexibility" in applying customs rules on a band of territory 20km each side of the Irish border as a way of solving the backstop issue?

The EU's deputy chief negotiator Sabine Weyand, who is a seasoned trade negotiator, ruthlessly skewered the idea.

"Indeed you can create an economic zone 20km around the border or wherever," Ms Weyand said. "But that does not address the issue we face on the island of Ireland.

Take a consignment of shrimp from an Asian country that have been treated with antibiotics.

These are banned by the EU because of fears the antibiotics can lead to blindness.

"Now this shipment arrives in Liverpool," Ms Weyand explained, "and is destined for the market in Northern Ireland and also the EU27.

"At what moment and how do we check that there are no residues of prohibited antibiotics? A 20km zone does not address this issue." If we take Ms Weyand's word for it that checks are necessary, could they be made less intrusive?

One senior Irish official says that because historically most of the flows of goods into Northern Ireland end up staying there, then checks could be less offensive.

By using data monitoring, customs officials would notice if there was a spike in one particular product which would then alert them to the risk of unregulated UK goods entering the single market via Northern Ireland.

"Let's drill down to the realities of what these are and see what is an appropriate level of tracking and control," the official said.

"It does not have to be very onerous or burdensome. It probably just needs to allow for the identification of a sudden change." British officials were expected to furnish Mr Barnier with data on goods flows between Northern Ireland and Great Britain this week.

Sources in London have suggested the report will indicate large volumes of goods going back and forward, and that this would actually strengthen British arguments and objections to a Northern Ireland-specific backstop. Dublin believes that any data will be helpful, and that furthermore the European Commission is being genuinely creative and flexible on the question of how checks might be carried out - given how protective member states are about the integrity of the single market.

However, in the febrile and toxic atmosphere surrounding the negotiations, the fear is that such efforts will not be given due consideration by London. "The problem is for the political context to be diffused enough to allow that conversation to happen," says a senior Irish figure.

"That's not yet settled. But I believe there's scope to do quite a lot in that space."

And yet, Irish officials must be concerned at the how the political space is contracting, since that contraction will inevitably throw up ever more gruelling dilemmas.

Does the Irish position on the backstop remain immovable at the risk of further undermining Theresa May's ▼ position?

If the Government does, by contrast, gamble on a British promise, and Theresa May ▼ falls anyway, will that promise be honoured by someone like Mr Johnson?

One seasoned and highly qualified observer of Anglo-Irish relations believes there was a period dating back to Margaret Thatcher and running right through the peace process, during which the UK system – the civil service, the eminences grises - would ensure that the Prime Minister of the day was extremely sure-footed and even-handed in managing both sides of the conflict (Jonathan Powell, Tony Blair's chief of staff is held up as the exemplar).

"The fear," says the observer, "is that Dublin is relying on an old British system that has passed. There is no predictability. There has been a paradigm shift. This is the difficulty for Ireland.

Casting his eye over the rise of Mr Johnson and the chaos in both the Labour and Conservative parties, the observer reflects: "When you're in a revolution you don't always know it's a revolution."

Source: RTE