

October EU Council Brexit Progress Report

With Party Conference season over and October's EU Council Summit just days away (18th October), Political Intelligence takes a look at the current state of the negotiations and the areas in which both parties need to reach compromise.

1 Looking Back

1.1 Salzburg Summit

The Brexit negotiations, thus far, have not progressed as the UK Government first envisaged and Brexiteers first hoped. The recent Salzburg Summit, held on 19th September, ended with politicians, journalists and the public alike stating the increased likelihood of a no-deal Brexit. On the first night of the Summit, May spoke in favour of a positive Brexit negotiation, as well as advocating her Chequers plan. However, the EU27 continued to reject these proposals, stating that they would jeopardize the 'integrity of the Single Market'.

May returned from the Summit and reported that an impasse had occurred in negotiations. She argued, both after the Summit and during Conference, that her proposals are the only plan that maintains a frictionless border on the island of Ireland whilst not imposing a customs border 'down the Irish Sea'.

1.2 Party Conference wrap-up

Heading into the Conservative Party Conference, few would have believed that Theresa May would be so bullish, choosing to dance before she addressed members of her Government and party alike. May, in what has been regarded as one of the best speeches of her premiership, continued to state that she was pursuing the best policy for Britain and gave the EU a show of good faith by criticising Jeremy Hunt's comment likening the EU to the Soviet Union. The Prime Minister claimed that Britain was not afraid of a no-deal, however did acknowledge that it would be difficult. Boris Johnson highlighted the party divide during his popular fringe event, where he argued that Chequers is a "cheat" and called on the Party to return to its traditional values.

Whilst you would expect such a political predicament to unite the opposition, Labour's Brexit stance continued to confuse. Shadow Brexit Secretary Keir Starmer advocated for a second referendum to much applause, whilst Jeremy Corbyn and John McDonnell reiterated that a general election was their aim.



"It is right that Parliament has the first say but if we need to break the impasse, our options must include campaigning for a public vote – and nobody is ruling out Remain as an option".

- Shadow Brexit Secretary Keir Starmer QC MP, Labour Party Conference

The Democratic Unionist Party meanwhile delivered a stinging rebuke, announcing that they would reject any proposal involving checks on goods coming into Northern Ireland. This comes in response to the Government's new plan to allow Northern Ireland to remain under certain EU regulations, reducing the need for customs checks. Nigel Dodds has firmly rejected this plan as he stated that "a catastrophic deal for us would be a border down the Irish Sea". Theresa May is currently facing rebellions from all side of the Government in response to her compromise of remaining in a 'temporary' customs union. Several Cabinet ministers are threatening resignation whilst Labour and Brexiteers are consistent in their plan to reject to reject May's deal. The Irish border remains the most divisive issue ahead of the upcoming October Summit.

2 The Art of the Deal

2.1 Withdrawal Agreement: The Remaining 20%

The Withdrawal Agreement and the Framework for the Future UK-EU Relationship are the two items currently being negotiated between UK and EU negotiators. If an agreement on each is found, they will be placed together with an already agreed transition agreement within one overall 'deal' that will be put to a vote in the UK and EU parliaments. But first agreement must be found. In this paper, Political Intelligence reviews some of the issues remaining within negotiations and the potential for an agreement to be reached.

2.1.1 Backstop

A backstop that includes the UK remaining part of a customs union to prevent a hard border between Northern Ireland and the Republic of Ireland appears increasingly likely at this point. Theresa May has sought to gain favour from the DUP by insisting it must be an all-UK customs union, however, the EU's insistence that Northern Ireland should stay in the Single Market alone and introduce regulatory checks with Great Britain has led to the DUP threatening to withdraw support from her Government. Conservative Brexiteers have also warned the Prime Minister that they will vote against a deal that includes indefinite membership of a customs union, which would prevent trade deals from being implemented.

Labour MP's could, therefore, be crucial to passing a final deal that includes a customs union backstop if Brexiteers remain unsatisfied by the overall agreement. It would partly satisfy one of Labour's 'six tests', albeit as part of a fall-back option, so could win over many MPs who are considering voting with the Government to prevent the confusion that would ensue over a no vote.

Labour's 6 tests

1. Strong and collaborative future relationship with the EU
2. "Exact same benefits" as we currently have as members of the Single Market and Customs Union
3. Fair management of migration in the interests of the economy and communities
4. Defends rights and protections and prevents a race to the bottom
5. Protects national security and our capacity to tackle cross-border crime
6. Delivers for all regions and nations of the UK

2.1.2 Agreement Governance

Governance of the Withdrawal Agreement and governance of the future UK-EU relationship is still yet to be fully agreed. Whilst both sides broadly agree that joint committees should oversee the overall

management of both these areas and the first stage of dispute settlement, there is less agreement on what happens at the second stage of dispute settlement and how decisions will be enforced. The UK maintains that the Court of Justice of the European Union (CJEU) should not be the appeal body given that it is made up of only EU representatives. The UK is unlikely to agree to compromise on this area, given the UK's commitment to not allowing EU courts authority over UK courts.

2.1.3 Geographical Indicators (GIs)

Do not underestimate the importance placed by the Commission and Member States on the protection of GIs in the EU's trade agreements. There is currently no agreement within negotiations between the UK and EU on the protection of geographical indicators.

The EU27's 3000+ GIs, compared to 86 UK GIs are often seen as a barrier to trade from other countries who can produce the same product at a lower cost. As an example, the UK currently only imports Port from Portugal. But after Brexit, it may import cheaper 'Port' from South Africa. Champagne could come from California and Feta from Russia. This is a scary prospect for EU exporters who send millions of euros worth of goods under those names to the UK each year. Under UK plans, the UK will introduce its own GI-protection system, that will 'broadly mirror' the EU's after Brexit. However, EU goods will need to be registered under the new system to gain accreditation, introducing an additional administrative burden for EU members with no guarantee of success.



2.2 Framework for a Future Agreement: Agree to Disagree

The framework, which sets the precedent for a future UK-EU relationship to be negotiated in full after Brexit, remains an area of contention both within the UK and between the UK and EU. May's Chequers proposals have been rejected by large sections of her own MPs, whilst the EU has countered with a deal that includes around 40% of Chequers contents, including parts on

security and foreign affairs cooperation.

The EU is against the idea of the UK only aligning with regulations on goods, which it believes will give the UK a competitive advantage and is strongly against the dual-tariff regime proposed which would mean the UK and EU collecting and processing import tariffs on goods destined for each other's territories. In which case it is hard to see, at present, whether May is likely to accept a proposal that makes the invocation of the Northern Ireland backstop almost inevitable given the complexity of dealing with the issue during any transition period.

Whatever the outcome, May will need to be sure she has enough in place to satisfy MPs in Parliament who have been guaranteed a 'meaningful vote' on the final deal. A weak or vague political declaration on the future framework is unlikely to garner the support needed for any deal to pass.

3 EU Council Summit, 17-18th October: A look ahead

Issues to be resolved

- The Withdrawal Agreement
- The Future framework for UK-EU relations

It is unlikely that both sides will come to an agreement on all outstanding issues by the October summit. Theresa May is unlikely to gain future support in Parliament for a deal that includes an open-ended customs union backstop, so expect this to dominate the final days and hours as the UK seeks an end date within the legal text that it can sell to the DUP and Brexiteers. The odds of a deal by November's 'extraordinary' EU Council summit are however increasing, with both sides aiming to agree on outline terms for the future relationship by March next year. May's insistence that 'we are leaving the European Union on the 29th March 2019' continues to stand, making the October summit crucial in resolving the impasse over the backstop, only then can negotiations turn full thrust towards resolving the future relationship.

Once issues around the Withdrawal Agreement are concluded, the EU is reportedly seeking for the UK to sign it off before an agreement on the future framework, something the UK has insisted it will not do. The UK continues to state that only when both parts are agreed will they both be signed off, restricting the possibility of one being implemented without the other.

3.1 No resolution?

If enough progress on key issues is deemed not to be made by the summit, then a statement setting out plans to increase no-deal preparations as a matter of priority is likely to be made. At this point it will be a case of who blinks first. Ensuing pressure on both sides at this stage is likely to be considerable and the issues that have led to an impasse are likely to take centre stage, with the UK and EU setting out their no-deal plans for Northern Ireland's border with the Republic of Ireland. It is entirely likely that both sides would return to the table to avert a crisis if such an event occurs. Leaving on the 29th March 2019 without a deal remains unlikely.

3.2 Government stability

May continues to have the support of the majority of Conservative Party MPs. However, two things could trigger a leadership crisis. Either she gives into the EU's demand on an open-ended customs union with the EU and agrees to keep Northern Ireland attached to the EU's Single Market, or she fails to gain support on the framework agreement for a future relationship. The former would most likely trigger the resignations of Scottish Conservative Leader, Ruth Davidson, and Scottish Secretary David Mundell, following submitted letters to that effect, whilst the latter could lead to a Brexiteer, such as David Davis, eventually being installed into Number 10 if a leadership challenge is taken to the Conservative Party membership.

Key Dates

-----OCTOBER-----

16th

Final Cabinet Meeting before the
October EU Council Summit

16th

EU General Affairs Council (Art.50)

18th-19th

EU Council Summit

-----NOVEMBER-----

Date TBC

Extraordinary Summit to finalise
and formalise a deal

-----DECEMBER-----

13th-14th

Last planned EU Council Summit
before the UK leaves the EU