



A framework to assess the Johnson proposals

The EU and the UK are negotiating Johnson's proposed changes to the Withdrawal Agreement (WA) - mainly to the Ireland/Northern Ireland parts of the WA. Where you stand on the UK latest proposals depends on where you sit – in Westminster, Stormont, Dublin or Brussels.

To help you to assess the challenges and the implications, the framework below (Table 1) interprets the proposals from these different perspectives. (See Table 2 for relevant trade statistics.)

Johnson's central proposal is that, after the transition period, the whole of the UK would leave the EU customs territory (the WA that MPs rejected three times keeps the UK in the EU customs territory until a long-term trade treaty is negotiated). The high-level proposals describe the basis of a new trade and regulatory model which involves two borders with Ireland. The model also scraps level-playing provisions to allow the UK to diverge from EU rules. Johnson proposes higher trade barriers than May did, which will inevitably cause greater economic damage to the UK.

The proposals lack technical detail. They do not explain how they would work in practice or give legal certainty to the EU and to the business community. The publicly available documents consist of a short letter¹ to Jean-Claude Juncker, the outgoing President of the European Commission, and a seven-page explanatory note². The government also made a confidential legal text available to the European Commission, but not to the public nor to member states.

The implementation of the proposals controversially depends on the consent of Northern Ireland Assembly and the Executive. It would last only as long as the Assembly provided its approval every four years, which give Stormont a unilateral veto – assuming it sits again.

Brussels' initial response, given by the Brexit Steering Group³ of the European Parliament, was underwhelming:

"The proposals do not address the real issues that need to be resolved, namely the all - island economy, the full respect of the Good Friday Agreement and the integrity of the Single Market."

The UK proposals would operationally only be worked out in detail by the EU and the UK, or in the UK unilaterally, during the fourteen-month transition period. This does not provide the necessary certainty or fulfil the agreed principles in the Withdrawal Agreement.

¹ Letter from the Prime Minister to President Juncker, *A Fair and Reasonable Compromise: UK Proposals for a New Protocol on Ireland/Northern Ireland* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836029/PM_letter_to_Juncker.pdf

² HM Government, *Explanatory Note: UK Proposals for a New Protocol on Ireland/Northern Ireland* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836116/Explanatory_Note_Accessible.pdf

³ European Parliament Press Release, *Brexit: recent UK proposals do not offer the safeguards the EU and Ireland need*, <https://www.europarl.europa.eu/news/en/press-room/20191003IPR63303/brexit-recent-uk-proposals-do-not-offer-the-safeguards-the-eu-and-ireland-need>

In summary, [we have] grave concerns about the UK proposal, as tabled. Safeguarding peace and stability on the island of Ireland, protection of citizens and EU's legal order has to be the main focus of any deal. The UK proposals do not match even remotely what was agreed as a sufficient compromise in the backstop."

For the UK and the EU to reach an agreement, it would need to maintain the UK's red lines, preserve the Good Friday Agreement and the integrity of the Single Market. Even if they find the holy grail, legislative practicalities mean that Johnson's 31 October deadline will be missed. The WA could not be ratified until its legal text is final and Parliament passes a Withdrawal Agreement Act (a substantial piece of legislation requiring careful scrutiny). The European Parliament must also approve a deal in a plenary vote.

As MPs head towards a likely Saturday sitting of Parliament on 19 October, please take a look at the features and implications of Johnson's proposals and see where you stand.

Table 1: Assessment framework

| | Proposed features after the transition period (end 2020) | Implications | | |
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| | | United Kingdom | | European Union (and Republic of Ireland) |
| | | Great Britain | Northern Ireland | |
| 1 | The 'Stormont lock' . Subject to Stormont approval every four years after end of transition period – firstly in 2025. | The Stormont lock could give the NI Assembly/Executive leverage and influence over the UK government. | If NI Executive and Assembly do not agree to enter into the agreement, at the end of the transition period then the default becomes 'no deal'. Stormont lock depends on finding a way to end suspension of devolved NI government (suspended since January 2017). Requires NI power-sharing institutions to choose every four years between aligning to ROI or GB, which creates uncertainty. Could split along sectarian lines and lead to a further collapse of power-sharing. Gives unionists (e.g. the DUP) a veto over border arrangements. | EU would have to agree to UK leaving now on the prospect of an arrangement (whose details are not fully clear) that would be approved unilaterally in NI later. This proposal amounts to a 'rolling exit mechanism', which the EU has so far refused. |
| 2 | The level playing field provisions in the current WA would be removed to be dealt with when negotiating the future UK-EU trading relationship. | Scraps UK commitment to stick to EU rules on, for example: state aid, workers' rights, safety standards, genetically modified food and the environment. | | Creates risk that UK will become an 'unfair competitor' able to offer goods to EU27 at reduced prices that would threaten EU27 firms and jobs. Sectors which are highly regulated, competitive and with low margins would be most at risk. |

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| | | <p>GB will have no customs union with the EU, no level playing field arrangements and a limited free trade agreement – probably limited to goods.</p> | | <p>Likely to mean that any future UK-EU agreement would include tariffs to compensate.</p> |
| | | <p>Potentially leads to regulatory savings, but previous government analysis has shown the overall benefits are likely to be small. Changing rules would make it easier for the UK to do a trade deal with the US but more difficult to trade with the EU.</p> | | |
| 3 | Good Friday Agreement | <p>There are serious concerns that the proposals undermine the Good Friday Agreement with damaging consequences for peace and stability. In daily life, the regulatory and customs proposals will break the illusion of a seamless join between NI and ROI.</p> | | |
| 4 | <p>Creates an all-Ireland regulatory area for goods trade and a regulatory border between GB and NI. Checks will apply to goods flowing from GB to NI, but no checks will apply NI to GB.</p> <p>NI remains aligned to EU Sanitary and Phytosanitary (SPS) rules for agricultural and food goods and EU rules for manufactured goods.</p> | <p>Open border for goods flowing from NI to GB, but more red tape and costs for GB business and government.</p> <p>Traders moving goods from GB to NI would need to notify the relevant authorities before entering NI.</p> <p>The greater the regulatory divergence between UK and EU is, the higher the intensity and costs of checks and controls will be.</p> | <p>Reduces need for regulatory checks at the NI border with ROI but creates regulatory border with GB.</p> <p>More red tape for NI and GB business causing delays, increased costs and complexity. NI business groups are against the proposals.</p> <p>Small businesses face a proportionately heavier burden than large businesses.</p> | <p>The proposals do not provide certainty to the EU as to where and how these checks and controls would be carried out.</p> <p>Creates new frictions in integrated supply chains with EU and ROI suppliers and customers. Results in additional costs to government and business.</p> <p>Requires changes to the application of EU law to stop entry into internal market (the Single Market) of products prohibited or restricted by EU rules.</p> <p>EU must protect the integrity of the Single Market and comply with WTO non-discrimination rules. If it allows free access to goods from NI into the Single Market, purely on the basis of regulatory conformity, then other third countries could demand similar concessions (subject to regulatory alignment). However, an overall trade agreement between the EU and the UK could address this.</p> |
| 5 | <p>Create a customs border between NI and ROI (and UK and EU).</p> <p>NI follows UK rules for customs duties and related policies at least until 2025.</p> <p>Conduct physical checks at traders' premises or other designated locations (believed to be 5 to 10 miles behind the border). Details to be worked out later.</p> | <p>UK can set its own tariffs for imports and negotiate its own trade deals. However, government figures show the value of these freedoms is small and would not compensate for the much larger cost of lost UK trade with the EU.</p> | <p>NI will align with the rest of the UK for customs duties and related policies. Customs infrastructure created behind the border, which means that a hard border returns but not at the frontier.</p> | <p>From the EU point of view, the proposals do not meet the objectives on the Protocol included in the WA for Northern Ireland/Ireland because they create a hard border. They also breach fundamental principles and red lines passed in European Parliament that govern the internal market.</p> <p>The exemptions require changes to the application of EU law and Union Customs Code. Putting these into effect requires EU legislative processes and scrutiny of EU institutions and member states (e.g. revisions to WA require European Parliament approval).</p> |

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| | <p>Apply an existing customs procedure known as 'transit' to the majority of trade on the island of Ireland. This allows a trader (or his agent) to submit customs declarations before and after goods cross the border. It would mean that goods movements between ROI and NI would not need entry or exit summary declarations required by EU rules - at least until 2025</p> | <p>Inspections and random checks will require mobile customs teams and co-operation between police and customs authorities on both sides of the border, and inland checkpoints.</p> <p>Tariffs will apply on trade between NI and ROI (subject to any trade deal between UK and EU).</p> <p>If there is a UK-EU trade deal, NI exporters will need to conduct rules of origin checks on exports to ROI (even if tariffs are zero).</p> <p>There would be no legally binding guarantee for the UK government before it agrees to a revised Withdrawal Agreement that such exemptions will be in place.</p> | <p>Normally it will take months to do – well beyond 31 October 2019.</p> <p>EU has already rejected similar proposals because they would lead to threats to integrity of the Single Market and create perverse incentives for businesses to stay below the small-trader threshold to avoid controls.</p> <p>EU is also likely to be concerned that these proposals would set an unwelcome precedent that would make it difficult for EU to refuse similar derogations for other problematic EU27 borders.</p> <p>ROI will need to check goods from NI (pre-certified by NI for compliance with rules of origin) to ensure correct tariffs are applied and, if applicable, conditions of a future UK-EU trade agreement are met</p> | |
| <p>6</p> | <p>Exempt small traders from customs processes and from paying duty. Introduce a trusted trader system.</p> | | <p>Likely to increase risk of fraud and smuggling due to absence of checks.</p> <p>Will incentivise traders to stay below any small-trader threshold.</p> | <p>Requires EU to award post-Brexit adequacy status to UK under EU data protection legislation for the exchange of personal data between ROI and NI. This is essential to make a trusted-trader scheme work and may take years.</p> |
| <p>7</p> | <p>UK will leave the EU VAT system. This means two separate VAT systems, but the UK proposes no controls at the border.</p> | | <p>Proposals do not say how the system will work without border checks and VAT payments at the border.</p> <p>Likely to increase risk of VAT evasion.</p> | <p>To avoid controls, the proposals implicitly assume greater integration of NI with the EU VAT system than an EEA country like Norway or any other third country. Combine this issue with the proposals' lack of detail and it seems that EU is unlikely to agree.</p> |
| <p>8</p> | <p>Notable omissions</p> <p>Services trade is ignored, despite being an important component of trade between NI and ROI.</p> <p>No proposals for handling the end of mutual recognition (for those goods not subject to harmonised regulation).</p> | <p>Likely to mean a limited UK-EU trade agreement with very damaging impact on future UK-EU trade (characterised by some as 'Canada-minus').</p> | <p>New trade barriers and loss of free movement of services will cause economic damage to the all-island economy.</p> <p>Treatment of an estimated 20% of NI-ROI goods trade remains unclear.</p> | <p>A trade relationship based on mutual recognition is unlikely to be acceptable to the EU, unless the UK/NI accepts EU oversight of its rules.</p> |

Table 2: Northern Ireland trade in 2018 – key statistics

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| <ul style="list-style-type: none"> • NI exported £11.3 billion to Great Britain and imported £13.3 billion • NI exported £10.1 billion to the rest of the world and imported £7.1 billion • £3.8 billion (38%) of NI exports were to ROI; £2.6 billion (36%) of NI imports were from ROI | <ul style="list-style-type: none"> • Of exports: goods were 80%; services 20%. (82%/18% for imports) • Agri-food goods accounted for 32% of goods exports to ROI and 40% of goods imports from ROI • 81% of NI exports were from smaller companies (250 employees or fewer) |
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In developing the framework, I have drawn on these excellent sources. Thanks to Professor L Alan Winters for commenting on the trade aspects. Any errors and omissions are my responsibility.

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