

# Johnson's Choice or Hobson's Choice? BoJo's Withdrawal Agreement

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Yesterday saw the grand announcement by Prime Minister Boris Johnson and outgoing President of the European Commission, Jean-Claude Juncker, of a revised “withdrawal agreement”.

What was remarkable with this agreement is that it effectively throws the Democratic Unionist Party (DUP) of Northern Ireland under a bus. To all intents and purposes disregarding DUP concerns over the creation of a customs and regulatory (i.e., hard) border between NI and the rest of the UK.

The EU had been adamant all along of course that any Withdrawal Agreement was contingent upon agreeing a “divorce bill”, upholding the rights of EU citizens resident in the UK and preventing a return to a hard border between NI and the Republic of Ireland.

The Withdrawal agreement on offer nominally replaces the “backstop” with the opportunity by the NI Assembly to vote every four years (by a simple majority) whether to remain in alignment with the Single market and Customs Union.

This would kick-in should a new economic treaty upon the end of the “transition period” of status quo ante (at the end of December 2020) not have been finalised by then. If they voted to in effect leave this alignment it would take another two years to enact. The first four year period would commence at the end of December 2020.

However, as the Northern Ireland Assembly (Stormont Parliament) has not sat now for nearly 3 years, there is no NI administration to vote on such a matter and it is hard to see it reconvening any time in the near future.

As such, the DUP, having lost their veto on alignment under Johnson's original proposals, are aghast, and have stated thus far that they will not support the agreement as it currently stands. This is because it would most likely perpetuate NI's divergent status from the

rest of the UK, with a “hard border” under these proposals running down the Irish Sea.

The future of the situation in NI in effect will be decided by the EU if the UK wishes to have any form of continued economic agreement – even that of a limited free trade arrangement favoured by the UK Government.

Despite Prime Minister Johnson’s confident assertions, it is rather unlikely that the details of a new economic relationship will be finalised in less than eighteen months (meaning a highly probable extension of the transition period would be required to be requested – which in itself would require six months’ notice, that is, by June next year under the current proposed agreement).

In addition to the manifest opposition of the DUP to the erection of a customs border between NI and Great Britain, Johnson faces problems on the wider issue of continued regulatory alignment with the Single Market.

The opposition Labour Party will in all likelihood vote against this agreement (the prospect of an amendment to subject to a referendum notwithstanding – more below).

Indeed, given the desire by the UK Government to dispense with EU regulatory thresholds on the environment, food standards, employment rights and taxation, it will be extremely difficult for any Labour MP to support the Agreement.

Johnson lacks a majority in Parliament and cannot rely on the 21 expelled Tory MPs to support him as they have divergent views on the nature of this agreement and commitment to another referendum to vote on anything agreed with Brussels.

Some openly state that they want another referendum, whilst others express concerns over the potential for different bits of the UK to be treaty differently going forward. Former Attorney-General Dominic Grieve, for example, has been open in stating he will only support a withdrawal agreement on the premise it is put to a public vote.

So unless the Withdrawal Agreement is presented to Parliament with a referendum attached to it (either in the Bill or via an amendment motion), I don't think it will get a majority in the House of Commons.

Even with an amendment to put it to a public vote, it is uncertain whether enough MPs would support the agreement (the Kyle-Wilson amendment on Theresa May's failed withdrawal agreement was designed to do just this, but failed to get majority support).

We are then left with the possibility that the Benn-Burt amendment will come into play and the UK Government will have to ask for an extension to EU membership yet again so that an election or another referendum (or both) could take place.

Despite reports of Jean-Claude Juncker stating that no further extension to the UK's membership should be on offer, it is the other 27 EU national leaders who will make this decision. And it is unlikely that they would reject such a request, with the EU anxious to avoid "No Deal" and even more anxious to avoid being seen to "push" the UK out (whatever their feelings of frustration with the UK in private).

Far from being Johnson's choice, the Withdrawal Agreement on offer is looking increasingly like a Brexit "Hobson's choice" for the PM. Hobson's Choice in that when his withdrawal agreement in all probability is shot down, he will be left with no option but taking up Parliament's mandate to ask Brussels for an extension to EU membership to at least January 31<sup>st</sup> 2020.

Strange how events evolve. Early on in the Tory leadership campaign I stated that I expected an extension to EU membership to occur even under Johnson as PM. This was because I assumed that faced with the Parliamentary arithmetic that he has, he would do a U-turn on his Brexit by October 31<sup>st</sup> stance "do or die" and shaft his erstwhile supporters.

However Johnson stuck to his ground with the prospect of threatening a "no deal" exit and it was only the successful passing of the Benn-Burt amendment in Parliament that appears to have taken the threat of No Deal off the table.

It certainly leaves us in very interesting times as we anticipate whether Parliament will reject his deal or pass it on the condition that it be put to a public vote via another referendum. Either way I think an extension to the UK's EU membership is now on the cards.