**Johnson’s New Deal: Not Good Enough**

**The UK’s new Brexit plan raises five EU concerns.**

By [Holger Schmieding](https://www.theglobalist.com/author/hschmieding/), in The Globalist October 4, 2019

The EU will negotiate in good faith with the UK for as long as possible. It wants a deal because it needs the UK in geopolitical matters.

* The EU reaction to Johnson’s offer needs to be seen from two different angles: First in terms of the blame game and second in terms of actual substance.
* We probably have to brace ourselves for another Brexit extension, to be followed by either new elections in the UK or a new referendum.

There is some progress, but the UK still has to change its position significantly further to get a revised Brexit deal. This is how one can sum up the initial EU reaction [**to the new Irish border plan**](https://www.berenberg.de/files/MacroNews2019/191002-%20Brexit.pdf) which UK Prime Minister Boris Johnson has submitted to Brussels.

The EU will negotiate in good faith with the UK for as long as possible. It definitely wants a deal, largely because it needs the UK as a reliable friend in geopolitical matters, such as dealing with Putin and Trump.
The alternative, having the UK as an aggrieved loner harboring a grudge against its big neighbor, the EU, isn’t very attractive.

However, there are clear limits. As it has maintained all along, the EU is not – and, in fact, cannot – be prepared to ditch its own red lines. Moreover, any revised deal on the Irish border needs to be acceptable to Dublin as well as the EU parliament.

**Substance vs. the blame game**

[**Given that the EU is still not sure what game Johnson is playing,**](https://www.theglobalist.com/uk-brexit-no-deal-boris-johnson-conservative-party/) the EU reaction needs to be seen from two different angles: First in terms of the blame game and second in terms of actual substance.

Johnson’s rhetoric at the Tory party convention (“our final offer” etc.) supports the suspicion that he is merely trying to shift the blame for a likely failure of Brexit talks onto the EU in his bid to impress his hardline base ahead of potential early elections.

However, the tone and contents of the actual letter suggest that he may want detailed negotiations on substance. In this regard, the letter differs from the more abrasive posture which the UK had taken in talks with EU leaders and negotiators since Johnson came to power.

**Some progress – but five problems remain**

In terms of substance, the EU sees clear progress on one key point: Johnson’s new proposal would avoid a regulatory border on the Irish isle by keeping Northern Ireland in the EU single market for all goods, not just for food and agriculture.

**However, the UK proposal raises five serious concerns:**

1. It requires customs and VAT checks between Northern Ireland and the Republic of Ireland after the end of the transition period.

2. The UK wants to give the Northern Irish parliament (the currently defunct “Stormont”) the right to unilaterally cancel the participation of Northern Ireland in the EU single market for goods after four years. If so, that would then require regulatory checks and not just customs checks between Northern Ireland and the Republic of Ireland. The EU has so far rejected the idea that a backstop could be cancelled unilaterally or be limited in time.

3. Under Johnson, the UK now wants to deviate more from EU standards than it had signed up to in the draft agreement negotiated under then-Prime Minister Theresa May. The UK now intends to drop the commitment to a level playing field. Such a greater regulatory divergence would require tougher border controls between the EU and the UK. In turn, this would make the Irish border issue even more relevant and more difficult to resolve.

4. Lack of time. With just two weeks left until the EU summit of 17-18 October and just four weeks until the supposed Brexit day of October 31, the EU doubts that the issues can be resolved and that a revised deal can be ratified or made legally binding in any other way beforehand. After all, the EU has a parliament as well. Procedures of the multi-nation club EU take time.

5. Most fundamentally, the new UK proposals fail to address the EU’s key point. In the UK, the “Irish backstop” is often treated as a potential blueprint for the future long-term economic relationship between the EU and the UK. This underpins the fear in some UK circles that the UK could be “trapped” in the EU customs union indefinitely. The EU sees the backstop merely as a last-resort guarantee to keep the Irish border open if all other attempts to do so fail.

UK proposals for decentralized and low-intrusion customs checks away from the border and other “technological solutions” are welcome. The EU is happy to test them during the transition phase and – if they work – settle for them in the end.

But to pre-commit to such untested solutions now without a “backstop” guarantee would require a leap of faith by Dublin and the EU. With his rhetoric and behavior, Johnson has not encouraged the EU to trust him enough for that. For ideas how the backstop could be modified from an EU angle, see [**“is a backstop compromise still possible?”**](https://www.berenberg.de/files/MacroNews2019/Economics_09-2019-11_backstopt.pdf)

**Three conclusions**

**First**, one can expect a flurry of negotiations in coming days. Acutely aware of the blame game risks, the EU will continue to talk and explain its position, sticking to its line of “progress, but the UK needs to shift its position further.”

**Second**, whether or not the UK will do so remains the key question. Given the expectations which Johnson has raised among Brexit hardliners and his very precarious position in the UK Parliament, that does not seem likely.

**Third**, as it stands, we probably have to brace ourselves for another Brexit extension, to be followed by either new elections in the UK in late 2019 (more likely) or a new referendum in spring 2020 (possible but less likely).

For a second referendum, the UK opposition would have to get its act together, topple Johnson and install an interim prime minister to serve [until after such a **“deal or remain” referendum.**](https://www.berenberg.de/files/MacroNews2019/191002-%20Brexit.pdf)

**Brexit: is a backstop compromise still possible?**

● **UK Prime Minister Boris Johnson faces a stark choice**: He will either have to resign in late October or ask the EU for another Brexit extension despite his claim that he would *“rather be dead in a ditch”.* He could only escape his own trap if he strikes a Brexit deal with the EU at the 17-18 October EU summit. If the UK parliament then ratifies the deal on 19 October, the UK would be heading for an orderly Brexit on 31 October. Johnson would be spared any self-inflicted indignities. We see a probability of no more than 12.5% for such a soft Brexit on 31 October. Instead, the UK seems likely to delay Brexit once again and settle the issue in a Brexit referendum 2.0 in the form of snap elections or a formal new referendum during another Brexit extension period.

● **Stopped out by the** **“Irish backstop”.** The guarantee to keep the Irish border open come what may (“Irish backstop“) remains the key issue. With his demand to “ditch it”, Johnson has nourished the impression that he has a limited grasp of the issues and/or is more interested in setting the stage for likely snap elections rather than securing a deal.

● **A sliver of hope remains:** By finally travelling to Dublin on Monday to meet Irish Taoiseach Leo Varadkar, Johnson signalled that he may now take the issue more seriously. His support for a common “**agrifoods area**” between Northern Ireland and the Republic of Ireland after Brexit can also be seen as a baby step in the right direction. Whether all this is just part of the blame game along the lines of “I tried hard but the other side didn’t budge” remains to be seen, however.

● **A solution is possible**: If the UK takes a close look at the issues. In this report, we discuss how the backstop dispute may – or may not – be resolved. We conclude that, if the focus is on the actual substance rather than the toxic politics around it, a deal should be possible in principle. However, passions are running high on all sides of the UK’s domestic debate. The probability that the UK will judge potential clarifications to the backstop on their merit and accept them remains very low.

**● A legitimate concern:** The UK worries that the EU could abuse the backstop to trap the UK in the EU customs union forever. This concern is legitimate. While the EU regards it as unfounded, it plays a key role in the UK debate. To further allay this concern, the EU and the UK could put even more emphasis on an independent arbitration mechanism to resolve disputes. De facto, an independent jury could be asked to make the final judgement whether alternative solutions to keep the Irish border open have become feasible. That would make it even more obvious that the backstop is just a backstop and not a tool to tie the UK to the EU.

**Four potential solutions**

 In principle, the backstop dispute could be resolved in one of four ways.

 ● **Dublin** gives up its demand for a permanent guarantee against a hard border between Northern Ireland and the Republic of Ireland. However, caving in to London might spell the end of Varadkar’s minority coalition in Dublin. The probability is very low.

● **Johnson** backs down and asks the UK parliament just ahead of the 19 October deadline to ratify a marginally amended agreement with the EU (maybe using a new term for the “backstop” without changing its contents very much). Ahead of likely snap elections later this year, such a U-turn could amount to political suicide for Johnson, however. His rhetoric seems to have made this virtually impossible.

● **The “backstop”** **is applied only to Northern Ireland, not the mainland UK.** The idea has been touted repeatedly. However, it remains difficult for the UK to accept because it would drive a wegde between Northern Ireland and the UK mainland. This option seems highly unlikely but not fully impossible.

● **The “backstop” is clarified in a way that addresses the UK’s key concern** about being “trapped” in the EU customs union forever without changing its nature meaningfully**.** If the UK acts in good faith, this should be possible. We examine this option in more detail in this report. However, it would still require such a verbal climbdown from Johnson that the chances of success are slim, to put it mildly.

**The nature of the backstop**

Although Johnson has upped the ante by confronting Brussels with a series of new demands, the guarantee to keep the Irish border open come what may (“Irish backstop“) remains the key bone of contention between the EU27 and the UK. Both parties have emphasized consistently that they want to keep the Irish border open after Brexit.

As the UK wants to set its own tariffs and standards for goods, this makes checks on goods crossing the border inevitable after the end of a post-Brexit transition period in late 2020 (or late 2022, if both sides agree to extend the transition period). To avoid any physical infrastructure at the border (and thus “keep the border open”), controls have to be conducted in a decentralized way. So far, the technology, systems and procedures for such decentralized checks do not exist or have not yet been proven to work. Both sides hope that such solutions will be ready by the end of the transition period. However, if this not yet the case, the backstop would keep the entire UK in the EU customs union. In addition, Northern Ireland would remain subject to parts of the EU27 single market regulations until such decentralized checks have become feasible.

To avoid activating the backstop or to end it fully or in part, a Joint Committee of the EU and the UK at ministerial level would have to rule that decentralized controls work. The UK could not unilaterally exit from the backstop. On the UK side, these provisions have raised the concern that the “backstop” could permanently trap the UK in a customs union with the EU. If so, the UK could not conclude trade deals for goods with other countries. This concern is legitimate. However, it is also unfounded.

In political terms, the EU27 has no interest whatsoever to tie the UK against its will to the EU customs union and common market. In technical terms, the Withdrawal Agreement (WA) already addresses these concerns: If one side (the UK) believes that the other side is not acting in good faith, it can ask an independent arbitration panel to examine the issue. This arbitration panel can issue a binding judgement which both sides have to accept. The EU27 could not abuse the backstop to trap the UK indefinitely inside the EU customs union.

 For the EU, UK demands to ditch the backstop, to be able to exit it unilaterally or to put a time limit on the backstop are a code for saying that the UK is ready to accept a hard border in Ireland eventually. A guarantee that one side can breach unilaterally would not be a guarantee in the first place. From the EU27’s point of view, Johnson’s proposal to remove almost the entire backstop from the WA in favour of unspecified “alternative solutions” to keep the Irish border open is a contradiction in terms. If such alternative solutions exist and can be shown to work, the backstop would never be activated. It would be irrelevant. If so, why would the UK need to threaten the EU with a hard Brexit for the sake of removing some useless fine print? However, if such alternative solutions do not yet exist, the backstop merely describes the way in which the Irish border would be kept open until such alternatives work.