

Brexit: Time regained

Andrew Duff



Table of contents

Extending Article 50	3
The Conservative party leadership	4
A new joint instrument	4
Joint governance	5
Refreshing the package	6
More time	7
Extending Article 50 (again)	7
The no deal dilemma	7
Extending the transition period	8
Endnotes	10

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The issue of timing has become crucial to Brexit. The UK has wasted time. The new prime minister will be tempted to ask for more. The European Council is highly unlikely to grant another extension to Article 50. No deal is both the legal and political default. There is a high risk that the UK crashes out of the EU on 31 October. However, a deal could still be done based on Mrs May's Withdrawal Agreement and an improved Political Declaration. But one amendment is needed to buy time: the transition period should be made extendable until the new association agreement enters into force. Such a revision will not breach anyone's red lines. It will obviate the need for the Irish backstop, reassure business and citizens, and enable an orderly exit.

EXTENDING ARTICLE 50

Amid the thicket of Brexit, one of the most difficult issues concerns extending the Article 50 process beyond the allotted two years. Article 50(3) allows the European Council, acting unanimously in agreement with the UK, to extend the period for the negotiation and conclusion of an agreement that sets out the arrangements for Britain's withdrawal and takes account of the framework for its future relationship with the Union. Initially, the EU insisted that, just as the treaty prescribes, the UK would cease to be a member state two years after it triggered Article 50 – that is, on 29 March 2019. However, when Theresa May failed to get the Withdrawal Agreement ratified by the House of Commons she abruptly faced the choice between crashing out on 29 March without a deal or of applying for an extension to the timetable.¹

There was much speculation about how opinion at the European Council meeting of 21 March would divide when confronted with Mrs May's request. In the event, the heads of government rejected her specific proposal (for an extension until 30 June) but agreed to extend until 22 May on the condition that the Commons ratified the agreement during the immediately following week. In the case that the Commons still failed to ratify, the European Council demanded that the UK would, before 12 April, indicate a way forward for its further consideration.

The deadline of 12 April was significant because it was the last date by which the UK could give notice to hold elections to the European Parliament on 23 May. It would have been possible for the European Council, acting under the rubric of Article 50, to grant the UK, as an imminently departing member state, a derogation from holding elections. But in order to protect the legitimacy of the new Parliament (and to bat off litigation) the leaders decided instead to insist that the UK would again have to elect MEPs.

On 5 April, with Westminster still in deadlock, Mrs May requested for the second time an extension of Article 50 until 30 June. President Tusk spelled out his anxiety:

“Our experience so far, as well as the deep divisions within the House of Commons, give us little reason to believe that the ratification process can be completed by the end of June. In reality, granting such an extension would increase the risk of a rolling series of short extensions and emergency summits, creating new cliff-edge dates. This, in turn, would almost certainly overshadow the business of the EU 27 in the months ahead. The continued uncertainty would also be bad for our businesses and citizens. Finally, if we failed to agree on any next extension, there would be a risk of an accidental no-deal Brexit.”²

Mr Tusk's own preference was to offer a flexible extension period of no more than twelve months during which time the UK could leave when it was ready without more summit meetings or shifting cliff edges. “Furthermore,” he added, “in the event of a continued stalemate, such a longer extension would allow the UK to rethink its Brexit strategy”.

President Macron, notably, disagreed, wanting to expedite Brexit as swiftly and in as orderly a way as possible. At its meeting on 10 April, therefore, the European Council came to an uneasy compromise after eight hours of discussion. It granted an extension “only as long as necessary and, in any event, no longer than 31 October”. Certain conditions were set on the UK, including the holding of the European elections, no re-opening of the Withdrawal Agreement, and no starting the negotiations on the future relationship – along with a general undertaking to behave well. Donald Tusk appealed to the British: “Please don't waste this time”.

The extension granted until the end of October has effectively chopped off seven months from the transition period.

President Tusk did not mention another reason for avoiding the endless prolongation of Article 50, which is that every extension of the negotiation period before Brexit eats into the duration of the transition period after Brexit, as foreseen in Article 126 of the Withdrawal Agreement. The extension granted until the end of October has effectively chopped off seven months from the transition period which is scheduled to end on 31 December 2020.

Defeated at last, Theresa May announced her resignation on 24 May. The contest to succeed her will not conclude until 23 July. The European Council may very well conclude that the battle for the Conservative party leadership is another waste of Brexit time. As the rest of Europe looks on, Emmanuel Macron expressed his growing impatience:

“I think this [31 October] is the final, final deadline because I don’t want to have the new Commission and this new executive to deal with [Brexit]. I think it’s a big mistake to procrastinate. I do believe we now have to implement the British people’s decision – except if the British people themselves decide something else”.³

The state of play was reviewed briefly by the European Council meeting on 21 June. President Tusk told the press:

“We have agreed on the following, united approach of the EU27. We look forward to working together with the next UK Prime Minister. We want to avoid a disorderly Brexit and establish a future relationship that is as close as possible with the UK. We are open for talks when it comes to the Declaration on the future UK-EU relations if the position of the United Kingdom were to evolve, but the Withdrawal Agreement is not open for renegotiation. And we have been informed on the state of play of planning for a no-deal scenario.”

THE CONSERVATIVE PARTY LEADERSHIP

The death throes of a once great ruling party were never going to be pretty. All but one of Tory leadership candidates (the exotic Rory Stewart) have tried to appeal to the more deranged wing of their party, bringing the level of the Brexit debate to a new low. The final contenders, Jeremy Hunt and Boris Johnson, the favourite, are both committed to leaving the Union by 31 October, preferably with a deal but otherwise without.

Neither Mr Hunt nor Mr Johnson care to reveal the detail of their prospective negotiating stance for a Plan B Brexit.

Mr Johnson plans to disaggregate the Withdrawal Agreement to reject the bits he does not like but keep its “serviceable” parts. He threatens to refuse to pay the financial settlement reached by Mrs May if the EU does not give satisfaction. He pledges to legislate to respect the rights of EU citizens resident in the UK but has no plan to protect the rights of British citizens residing in the EU. He demands a time limit to the Irish backstop. Mr Johnson’s grasp of European affairs is known to be sketchy. Combining bluff and bluster, rather than persuade, he preaches: “You have to believe in Brexit to deliver Brexit”.

Neither Mr Hunt nor Mr Johnson care to reveal the detail of their prospective negotiating stance for a Plan B Brexit. Both prefer to talk less about the content of their respective new deals and more about the process of leaving come what may. Although Mr Hunt, a former

Remainer, has been more accommodating in the past, neither candidate shows much respect for the careful new balance of rights and obligations between Britain and the EU prescribed in the Withdrawal Agreement.⁴

Nobody is impressed by the candidates threatening the EU with no deal. The truth is that the EU is much better prepared for no deal than the UK.

The new prime minister will face the same dilemma as the last: how to reconcile a bid for freer global trade without sacrificing the benefits of regulatory alignment with the EU’s single market? And the Irish backstop continues to antagonise the Brexiteers. The EU, for whom the backstop remains an indispensable insurance policy, will continue to insist that there is no hard border on the island of Ireland, that any new trading and customs relationship must respect the EU Customs Code and WTO rules, and that Ireland will be treated by Britain like any other EU state.

It would be possible for the new government to return to the EU’s initial offer of a customs deal exclusive to Northern Ireland, although this would imply a higher degree of regulatory control between Northern Ireland and Great Britain than Mrs May was prepared to accept. Greater emphasis can be given to the North-South machinery installed under the Good Friday Agreement (as long as a new executive is established by the Stormont Assembly). But well-publicised efforts by certain zealous Conservatives to introduce technical ‘alternative arrangements’ within three years to manage cross-border activity are viewed in Brussels and Dublin with enormous scepticism.⁵

The EU 27 look on at the Conservative party leadership battle with amazement. Nobody is impressed by the candidates threatening the EU with no deal. The truth is that the EU is much better prepared for no deal than the UK.⁶ The EU will stick to its original guidelines, proven to maintain unity among the 27, even as the new British prime minister adds red lines to the UK’s position. The Withdrawal Agreement is the only deal on offer. Whereas the EU side continues to emphasise that it is willing to modify the Political Declaration to accommodate the British, it will be up to London to present a new draft of the document.⁷ Taking such an initiative on the Declaration, however, presupposes the adoption by the new government of a politically coherent and legally sound position.

A NEW JOINT INSTRUMENT

The Brexiteers invest some importance in the new Instrument relating to the Withdrawal Agreement and a Joint Statement supplementing the Political Declaration that were thrashed out between the British government and the Commission in Strasbourg on 11 March. These were endorsed by the European Council on 21 March.

The Instrument, which is deemed to have legal force and a binding character in international law, underlines various aspects of the Withdrawal Agreement and its Irish Protocol. It recalls that neither the EU nor the UK wants the backstop to enter into force, that negotiations to replace it will start promptly after Brexit and proceed swiftly in the hopeful understanding that the permanent future arrangements can enter into force to coincide with the end of the transition period.⁸ Any replacement for the backstop will ensure no hard border, protect the integrity of the EU's internal market and respect the UK's territorial unity. The backstop will be kept under permanent review. Any dispute about the backstop will be subject to the joint arbitration mechanism established under the Withdrawal Agreement, and any judgment of the tribunal will be binding on both parties.

These two most recent initiatives are helpful in and of themselves. They show the EU is flexible. And they make the package deal more palatable and understandable as far as the British sceptics are concerned.

The Joint Statement on the Political Declaration aims to enhance and expedite the negotiation and conclusion of the final Association Agreement between the UK and EU. When parts of the final Association Agreement are finalised they might enter into force on a provisional basis before the ratification of the entire treaty. Preparations for the negotiation of the agreement are to start at once. The EU notes the UK's intention to ensure that its social and environmental standards do not regress from those in place at the end of the transition period. The UK Parliament will be involved in considering future changes in EU social and environmental law. A specific negotiating track will be established on the so-called alternative arrangements for the Irish border.

These two most recent initiatives are helpful in and of themselves. They show the EU is flexible. And they make the package deal more palatable and understandable as far as the British sceptics are concerned. Much more attention should also be paid to the arrangements proposed in the Withdrawal Agreement and Political Declaration that will govern the management of Brexit.

JOINT GOVERNANCE

Before Boris Johnson decided in March to at last vote for the Withdrawal Agreement, he may have noticed that, in addition to the Irish Protocol, the treaty is divided into separate parts covering citizens' rights, separation issues, the transition period, financial provisions and institutions. As prime minister he would have to decide how to cater to all those issues without which Britain's exit from the Union will be disorderly and quite probably unlawful. As ever

with the EU, institutions matter. Politicians at Westminster should pay more attention to them.⁹

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The deal agreed by Mrs May establishes a sophisticated and comprehensive system of joint governance between the UK and the EU whose purpose is to guarantee the correct interpretation and application of the Agreement and ensure compliance with the obligations provided for. It is deemed "essential to establish provisions ensuring overall governance, in particular binding dispute-settlement and enforcement rules that fully respect the autonomy of the respective legal orders of the Union and of the United Kingdom as well as the United Kingdom's status as a third country".¹⁰

The institutional set-up is meant to foreshadow the governance of the Association Agreement that will eventually function after the end of the transition period. Its template is that of the Ukraine Association Agreement of 2014, and is further elaborated in Part IV of the Political Declaration. The institutions range from annual summit meetings between the British prime minister and the Presidents of the European Council and Commission, a regular ministerial council, a joint committee at official level with a number of specialised sub-committees, a joint parliamentary committee between the Westminster and European Parliaments, and, not least, a joint court. It is intended that a secretariat serving the Joint Committee during the transition period would morph into a permanent Brussels-based body attached to the ministerial association council.

The very viability of the Withdrawal Agreement rests on making a success of the Joint Committee, which will be co-chaired by a member of the Commission and a British government minister. Article 164 of the Withdrawal Agreement gives it wide powers, with the potential to expand them further.¹¹ Its core function is to "supervise and facilitate the implementation and application" of the Agreement. It has a problem-solving role, and will try to settle disputes politically. It can consider any relevant matter, including situations unforeseen in the Agreement, and can amend the Agreement in matters of detail. The Committee's mandate is impressive and permissive. Its decisions will be joint and jointly binding.

A joint arbitration panel will be established to settle disputes. The European Court of Justice will be asked to interpret questions of EU law. However, in an important concession to the British, the arbitration panel itself has discretion to assess whether a matter in dispute concerns the interpretation of a concept or provision of Union law relevant to the Withdrawal Agreement, or whether a question concerns a breach by the UK of an obligation under the Agreement. This amounts to an

unprecedented relaxation by the Court of Justice of its prerogative to be the sole judge of whether Union law is involved or not.¹²

The very jointness of the governance machinery created under the auspices of the Withdrawal Agreement makes a nonsense of the assertion of the arch-Brexiteers that the UK is to be reduced to the role of a servile, vassal state. On the contrary. The system is designed to build a trustworthy and fluent channel of communication and consultation across the whole spectrum of the future relationship. If approached by the UK in a positive rather than a defeatist spirit, the working of the joint governance structure will allow Britain, as an associated state, an exceptional degree of political, technical and judicial influence over EU decisions. It is in everybody's interest that the proposed system works as smoothly and transparently as possible. Agile scrutiny of the Joint Committee by both the British and European Parliament will assist its development.

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As with the rest of the Withdrawal Agreement, the governance package is a good one for Britain. Boris Johnson may not care to acknowledge it, but he should know that the EU will never offer him a better institutional deal than the one it negotiated with Theresa May. The EU is determined not to repeat with the UK the risk of backsliding and voluminous litigation that it has to endure in its relationship with Switzerland. The Swiss have made a political choice to resist the EU's arbitration mechanisms and as a result are cut off economically from dynamic alignment with the *acquis*. The Swiss 'model' is not one to be emulated by Britain.

REFRESHING THE PACKAGE

Since the referendum result in June 2016, the EU has followed the principles and guidelines established by the European Council. Its chief negotiator, Michel Barnier, and his team have managed to be both principled and pragmatic. In the course of the Article 50 negotiations, the EU softened its position both on Ireland and on joint governance. Even after the Withdrawal Agreement was concluded on 25 November 2018, the EU continued to be helpful to Mrs May as she tried to steer the treaty through her party and Parliament. The conclusion of the Instrument and Joint Statement on 11 March is evidence of the EU's continuing adaptability.

First David Cameron and then Theresa May have been difficult negotiating partners for the EU. The Brexit

process has been hard, frustrating and so far fruitless. Brussels now waits in nervous anticipation for Britain's next Conservative prime minister, hoping to be presented with a more serious prospectus for Britain's future in Europe than has yet surfaced during the Tory party leadership contest.

The big unknown is what the EU can do, if anything, to bolster the chances of Westminster ratifying the Withdrawal Agreement. The Political Declaration can certainly be rewritten quickly to be more attractive to that large number of both Tory and Labour MPs who are seeking to respect the outcome of the referendum while not burning Britain's bridges with the European Union.

The revised Declaration will have to reflect the fact that neither Mr Hunt nor Mr Johnson as prime minister will pursue the objective of a permanent customs union with the EU. The main goal, therefore, will be a comprehensive free trade agreement. It is also apparent, however, that the negotiation of such an FTA will be much more complex and protracted than either candidate seems to understand. Even the EU's relatively straightforward free trade agreement with Canada took eight years to negotiate; Mercosur has taken twenty.

The fact that the UK will start its trade negotiation from a position of full alignment with the EU *acquis communautaire* and will then have to negotiate its way outwards and downwards does not make things simple. For a start, there is no precedent for such a managed exercise in divergence. The EU will insist on approximation with the norms and standards set by its single market in return for privileged market access for British business. Where regulatory equivalence is agreed in theory, it will be policed in practice by regulation authorities, sector by sector, that the European Commission must be able to trust. Tariff-free goods are the easy bit: keeping non-tariff barriers in check is more challenging, especially for services, state aid, competition, public procurement and data. And that is before any British FTA is adjusted to give Northern Ireland a special privileged place closer to the EU regime.

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The British need a dose of realism. More transparency about the UK's objectives would help the process be more democratic. There is also a need for greater clarity about the purpose of the envisaged transition period. Although the Political Declaration can point to the future direction, it will only be during the transition period that there will be time and opportunity to consult properly, prepare for and then open negotiations on the final Association Agreement.

MORE TIME

Mr Johnson will find things are more complicated, and will take much longer to fix, than he thinks. If he becomes prime minister he will have to admit what he seeks to deny as the candidate: that ratification of the Withdrawal Agreement is still required, come what may.

Across the summer, Britain's ruling party will continue to work out what it really wants from Brexit. The incoming government will establish a fresh negotiating team to make urgent contact with the Commission. The EU is ready to talk with the new British government.

Expect, therefore, a scramble to repackage Mrs May's deal in September, to wing it past the Tory conference, and then to secure the required meaningful vote in the Commons just before the next scheduled meeting of the European Council on 17-18 October.

The British Parliament, however, seems ill-prepared to engage more seriously with the substance of Brexit. MPs return to work on 3 September only to go on recess again ten days later for the party conference season.¹³ What is increasingly clear, therefore, is that there is now not enough time before 31 October for the British Parliament to complete all the necessary legislative steps to ensure an orderly and lawful Brexit.

Expect, therefore, a scramble to repackage Mrs May's deal in September, to wing it past the Tory conference, and then to secure the required meaningful vote in the Commons just before the next scheduled meeting of the European Council on 17-18 October. What will happen then?

If the Commons has passed the meaningful vote under the terms of the EU Withdrawal Act 2018, the new prime minister is likely to ask the European Council for a short extension of Article 50, of a few weeks only, in order to allow London to complete all the necessary steps to pass into law the Withdrawal Agreement Bill and to establish the British arm of the joint governance arrangements.

EXTENDING ARTICLE 50 (AGAIN)

If the Commons has still not passed the meaningful vote by mid-October, however, the European Council will face exactly the same quandary as before – but in a more accentuated form. As we noted above, Donald Tusk articulated the dilemma when he and his colleagues decided to grant the two earlier extensions in March and April.

The EU's new leadership will be just as keen to expedite Brexit as the old guard, if not more so. Charles Michel as President of the European Council will steer closer

to Mr Macron's line than that of Mr Tusk. Commission President Ursula von der Leyen will be anxious to press on with tackling the many other issues rising fast on the EU's agenda, both internal and external. Brexit has been a real distraction from the main business of the Union; now it is turning into a real nuisance.

The European Council seems unwilling to let the British off the hook so easily again. Unless a very short time is needed to close the deal, it is unlikely that the 27 heads of government will agree unanimously to further prolong the Brexit agony by extending Article 50 again.

Although the European Council will not want to be blamed for precipitating a disorderly no deal departure, it has learned from what happened in the spring when its decision to extend Article 50 released pressure on the House of Commons and the momentum behind ratification of the Withdrawal Agreement was lost. The European Council seems unwilling to let the British off the hook so easily again. Unless a very short time is needed to close the deal, it is unlikely that the 27 heads of government will agree unanimously to further prolong the Brexit agony by extending Article 50 again.

THE NO DEAL DILEMMA

It is vital that the House of Commons learns this. Too few British politicians and commentators seem to have understood that the legal default under EU primary law is that Brexit happens on 31 October. No unilateral act of the Westminster parliament can change that fact. For all the talk of there being a Commons majority to prevent no deal, the new prime minister would only need to do precisely nothing for EU law to take its course. In this constitutional matter, EU law trumps UK law. There is no need to prorogue the British Parliament (suspending the session), as some Brexiteers have suggested, for the EU treaties to cease to apply to the United Kingdom on 31 October.

In other words, no deal is not only the legal but also the political default. Significantly, both Mr Hunt and Mr Johnson promise to intensify government preparations for no deal.

Approaching the cliff edge tends to concentrate the parliamentary mind, and many ruses are being floated with the aim of avoiding no deal. One such suggests that Parliament should pass a law instructing the new prime minister to ask for an extension to Article 50 against his will. This would trigger a constitutional crisis. The reaction of the European Council in such circumstances can only be imagined.

Expectations continue about the possibility of a snap general election.¹⁴ But unless and until Brexit is resolved an early election is very unlikely. Both the Tory and Labour parties would face massive defeat at the polls, losing seats not only to the Brexit party but also to the nationalists, Liberal Democrats and Greens. Boris Johnson would hardly want to risk losing his new job. And in any case he would be reliant on a two-thirds majority vote of the whole House to dissolve Parliament.¹⁵

The minority parties want a second referendum to re-run the first. Having floundered around for months, on 9 July the Labour leadership decided it will vote against any deal proposed by the Conservative government both in Parliament and in any subsequent 'confirmatory' plebiscite. How many Labour MPs refuse to follow the leadership remains to be seen, but it will be a significant minority.

So a perfect storm is brewing at Westminster. There is not yet a majority in the Commons for the Withdrawal Agreement. But nor is there a majority for any of the alternatives.

One has to recall at this stage that all parties, including the Lib Dems (though not the SNP), promoted David Cameron's In/Out referendum in the first place, and pledged to respect its outcome. The manifestos of both the Tories and Labour at Mrs May's botched election in 2017 promised to deliver Brexit. The vast majority of MPs voted to trigger Article 50.

A second referendum would be bound to divide the nation again in terms of class, generation and province. Claims that it would be a magically 'unifying' event are naïve or cynical. All parties would split under the stress of a referendum campaign, rendering improbable a smooth return to stable party political government. If the people chose to reject the decision of Parliament, Britain's constitutional crisis would take on a new proportion. Advocates of another referendum, who cannot even agree among themselves about the question to be put, would do well to pause. A second referendum has every likelihood of merely compounding the error of the first.

So a perfect storm is brewing at Westminster. There is not yet a majority in the Commons for the Withdrawal Agreement. But nor is there a majority for any of the alternatives: a cliff-edge Brexit, a vote of no confidence, an early general election, a government of national unity, a second referendum, or a revocation of Article 50.

Europe, meanwhile, is no mood to further extend Article 50. Bluster from Boris Johnson or an escalating constitutional crisis in the UK will not serve to change that mood. Rather the contrary.

So we come back to where Mrs May started and ended. The only way to resolve the Brexit crisis is to ratify the Withdrawal Agreement, albeit with a make-over. Boris Johnson voted for the Withdrawal Agreement in March: as prime minister he could well forge a new majority around a quickly re-packaged deal. Revising the Political Declaration will be relatively straightforward. In addition, Mr Johnson should ask the EU to make one important new concession on the Withdrawal Agreement itself.

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EXTENDING THE TRANSITION PERIOD

We have already noted the lack of time. We know that the Withdrawal Agreement allows for the transition period to be extended. Article 132(1) says that "the Joint Committee may, before 1 July 2020, adopt a single decision extending the transition period for up to one or two years". There is little doubt that the UK will need all the extra time it can get, especially after its late start, to prepare for, negotiate, conclude and then make the transition to the final Association Agreement. But the prospect of all that being accomplished even by 31 December 2022 is far-fetched.

Much rests on the quality of the joint governance of the transition period and the speed of the trade negotiation. Some sections of the Association Agreement – for instance, in security cooperation – should be ready to be implemented, even on a provisional basis, earlier than others. The point of the transition period is to allow a phased adjustment of Britain's membership obligations while the new relationship is being readied for implementation.

Brexiters may dislike the concept of the transition period, but they cannot deny the vital importance of the legal certainty it brings for Britain's business and public services, including stakeholders in current EU programmes. During the transition, period goods and services continue to be traded, industrial supply chains are uninterrupted and EU data links sustained. Cooperation in criminal and justice matters continues as normal. Britain's international position will remain stable. When the guillotine falls on the transition period, the UK, whether ready for it or not, will attain the status of third country as far as the EU is concerned. The Irish backstop will come into force. With the exception of citizens' rights, the elaborate machinery of joint governance set up for the transition period will be collapsed. Britain will be reliant on the kindness of strangers.

To date, those who acknowledge the need to gain time have focussed only on the possibility of extending the Article 50 process. A better target, however, would be to

ensure the possible extension of the transition period beyond the end of 2022 so that its termination would elide smoothly with the entry into force of the final Association Agreement.

At present there is a dissonance between the rigid provision in Article 132 to time-limit the transition period at the specified arbitrary date and the permissive requirement of Article 184 that commits the Union and the UK to “use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration of 25 November 2018 and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period”.

Those who acknowledge the need to gain time have focussed only on the possibility of extending the Article 50 process. A better target, however, would be to ensure the possible extension of the transition period beyond the end of 2022.

One option would be to amend Article 132(1). Alternatively, a new protocol could be added to the Withdrawal Agreement that lays down the decision-making procedure to be adopted for a further extension of the transition period after the guillotine falls on 31 December 2022. Notwithstanding Article 132(1), the additional protocol would establish contingency arrangements for 2023 and beyond, until such time as the final Association Agreement enters into force.

Such an amendment to the package deal would enhance stability, minimise disruption to the British economy and reduce the risk of collateral damage to the EU. It would not breach the EU’s red lines. It would negate the need to operate or to time-limit the Irish backstop. A flexible extension of the transition period managed by the Joint Committee would remove the need for more crisis summits. It would also seem to meet Mr Johnson’s proposal for a “standstill” until the new free trade agreement sees the light of day. As a viable way to avoid crashing out of the European Union without a deal, it should therefore command a majority in the House of Commons.

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- ¹ See my previous dispatch *Brexit: Losing control*, Brussels: European Policy Centre, 24 April 2019.
- ² Donald Tusk, *Letter to the 27 heads of government*, 9 April 2019.
- ³ Emmanuel Macron, *Paris press conference*, 3 June 2019.
- ⁴ See Jeremy Hunt's speech of 1 July, www.conservativehome.com.
- ⁵ See, particularly, *Alternative Arrangements for the Irish border: Interim Report*, 24 June 2019.
- ⁶ See Commission Communication on the state of play of preparations of contingency measures for the withdrawal of the UK from the EU, COM(2019) 276, 12 June 2019.
- ⁷ See, for example, *New proposal for amending the Political Declaration on Britain's future in Europe*, European Policy Centre, 19 March 2019.
- ⁸ As in Withdrawal Agreement, Article 184.
- ⁹ The EU Committee of the House of Lords published a good but little appreciated report on these matters: *Beyond Brexit: how to win friends and influence people*, 35th Report of Session 2017-19, 25 March 2019.
- ¹⁰ Withdrawal Agreement, Preamble.
- ¹¹ For the rules of procedure of the Joint Committee, see Annex VIII.
- ¹² Article 174(2), Withdrawal Agreement. For the rules of procedure for the court, see Annex IX. For the Court's relevant jurisprudence, see Opinion 1/91 of the Court on the EEA agreement and Opinion 2/13 on the accession of the EU to the European Convention on Human Rights.
- ¹³ The Lib Dem conference is 14-17 September; Labour's is 21-25 September; the Conservatives' 29 September to 2 October.
- ¹⁴ The next general election is scheduled for 5 May 2022.
- ¹⁵ Under the terms of the Fixed-Term Parliaments Act 2011. In extremis, a general election would follow if the Queen could find no prime minister to survive a vote of no confidence in the House.

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