

Advice for Boris Johnson: don't take the EU on in Lawfare

*The UK government has admitted it intends to break international law, thereby adopting a 'mad man' rollercoaster strategy for the end phase of the Brexit negotiations. However, **Brigid Laffan**'s advice for Boris Johnson is: don't take the EU on in Lawfare.*

The week beginning the 7th of September 2020 was one of the most dramatic weeks in the lengthy Brexit negotiations as the UK seeks to disentangle itself from the EU. Having achieved political Brexit on January 31, the UK and EU future relationship negotiations must finish by or close to the end of October if there is to be a deal in time for January 1, when economic Brexit happens. Last week, with time in short supply, the Johnson government opted for a 'mad man' rollercoaster strategy for the end phase of the negotiations.

Effectively the [Internal Market Bill](#) published on 9th September, drove a coach and four through the Withdrawal Agreement (WA) which was accepted by Johnson, inserted into the Conservative Manifesto for the December 2019 election and subsequently ratified by this Parliament. If the UK wanted to attack the DNA of the EU and its value system while still negotiating with it, London could not have touched a more sensitive nerve.

There was no attempt to disguise what the Johnson government was doing; Brandan Lewis, Secretary of State for Northern Ireland said in the House of Commons that the bill does '[break international law in a specific and limited way](#)'. The resignation of a senior law officer lent credence to the view that the Johnson Government was intent on breaching international law, in this case, the WA.



There is much speculation about why Johnson opted for this strategy that I will not address other than to say that the justifications are risible but the claim that it is to protect the Good Friday Agreement (GFA) is grotesque. That the justifications come from English politicians who have rarely if ever visited the island of Ireland just adds to the insult.

As the events of the week unfolded, Brussels was confronted with the reality that the UK was intent on taking it on in 'lawfare' which led to a flurry of activity in Brussels and the capitals, especially Dublin. How to respond? One option was simply to suspend the negotiations on the *Future Relationship* but this would feed the blame game so prominent in London and EU is determined not to play Johnson's game. That said, the EU takes 'lawfare' very seriously.

Once the Internal Market legislation to be published the EU immediately asked for a meeting of the EU-UK Joint Committee, the governance arrangement for the WA, chaired by Michael Gove and Commission Vice-President Maroš Šefčovič. Exceptionally all 27 member states joined the meeting which underlines the salience of recent developments. In its statement following the meeting the EU left no doubt about the gravity of the situation by using language such as the '[EU's serious concerns](#)', '[no uncertain terms](#)' and [violations of the WA that would 'undermine trust and put at risk the ongoing future relationship negotiations'](#). As the WA came into effect on February 1, the EU reminded the UK that '[neither the EU nor the UK can unilaterally change, clarify, amend, interpret, disregard or disapply the agreement](#)'. The EU has now asked the UK to withdraw the problematic measures by the end of September. The Union is buying time and allowing the UK to find a way out of this if it so wishes.

Further Pressure on the UK came when the European Parliament Group Leaders and members of the UK Coordination Group, the group following the Future Relationship negotiations, who collectively said that '[Should the UK authorities breach – or threaten to breach – the Withdrawal Agreement, through the United Kingdom Internal Market Bill in its current form or in any other way, the European Parliament will, under no circumstances, ratify any agreement between the EU and the UK](#)'.

The response in Dublin to developments has ranged from fury to disbelief but also a determination that the stability of the island of Ireland will not be collateral damage in Johnson's search for a hard Brexit. Nor will the UK government be allowed to renege on its legal obligations under the WA. To ratchet up the pressure, Dublin played the American card as one senior democrat after another, notably Nancy Pelosi House Speaker and Richard Neal, Chair of the powerful Ways and Means Committee, reinforced the message that there will be no US trade agreement if the UK undermines the GFA by not adhering to the WA.

The EU will not agree on a deal on the *Future Relationship* if the UK persists with the problematic measures in the Internal Market Bill. Consequently, developments in London have greatly increased the risks of no deal at the end of the year with all of the consequences that flow from this for both sides. Even if the government decided to fashion an agreement, the European Parliament would not ratify it. If no deal results from the deliberate breaking of the WA, the EU will be less inclined to take unilateral action that would mitigate the worst effects of no-deal disruption. Moreover, the UK's obligations under the WA are not contingent on there being a deal. The EU will immediately trigger the compliance provisions of the WA and the issue could end up before the European Court of Justice if not settled elsewhere.

Whatever lies behind the Johnson strategy of openly breaching international law, it is a risky strategy for a country that will be on its own in an international system undergoing a major structural transformation. The EU is not just a values project but a power project and as the law is one of its main sources of power, the EU will never give into a UK government that so openly breaks the law. As for the consequences for the island of Ireland, it will destroy trust in the UK, so painfully built up over decades of violence and will resonate with earlier and darker periods of British-Irish relations. London has some serious choices to make over the next months.

This article gives the views of the author, and not the position of LSE Brexit, nor of the London School of Economics.