

With Biden's election, Johnson's Irish border gambles look increasingly risky

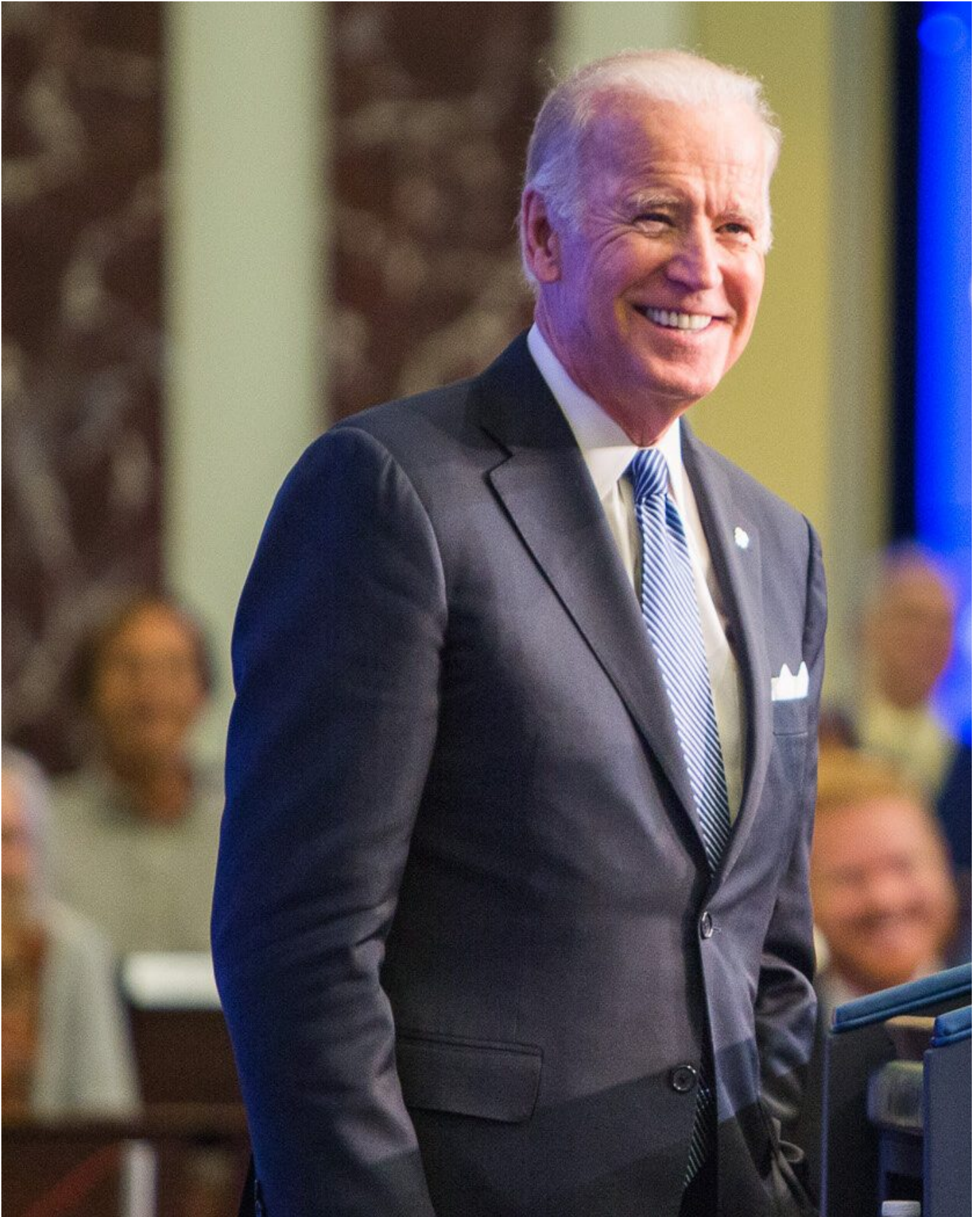
*What effect might the outcome of the US election have on the current Brexit negotiations? Joe Biden's victory signals a dramatic shift in American foreign policy. This means that Boris Johnson's Irish border gambles look increasingly risky, argues **Colin Provost** (UCL).*

Brexit has not been an easy ride for the British public or for any of the politicians or civil servants involved in its negotiation. While Brexiteers once promised that the UK would "take back control" and be free from EU regulations, relatively open borders and far-reaching legal jurisdiction, we have instead seen negotiations with the EU repeatedly approach the brink of a no-deal Brexit, only to be pulled back at the last second, while extensions and transitions delay the final exit. Boris Johnson's recent attempts to pass the Internal Market Bill that violates the terms of his own 2019 withdrawal treaty from the EU once again raise the very real possibility of a no-deal Brexit. However, the political ground underneath Johnson's government has recently shifted, as Joe Biden's victory in the 2020 US presidential election signals a dramatic forthcoming shift in American foreign policy.

To understand the current negotiations, it is vital to comprehend the importance of the border between Ireland and Northern Ireland – the single largest thorn in the side of Brexit negotiations. Leaving the EU without a trade deal has always meant re-establishing a hard border, as customs checks would need to be performed on goods crossing the border. While the 1998 Good Friday Agreement – the treaty that effectively brought an end to The Troubles – does not explicitly forbid a hard border, most observers agree that a hard border is not desirable and runs counter to the spirit of the agreement.

The 2019 Withdrawal Agreement crafted by Boris Johnson's government allegedly sorted this problem by fixing the border in the Irish Sea, while keeping Northern Ireland primarily aligned with EU regulatory standards, to avoid the hard customs border. It was this agreement that helped Johnson cruise to victory in the 2019 election on the back of the slogan, "Get Brexit Done". However, the presence of the border in the Irish Sea means that goods moving from Northern Ireland to the rest of the UK must clear customs. The government's Internal Market Bill is designed to give ministers the right to overrule this part of EU law, as well as EU state aid conditions that apply to goods in Northern Ireland. But while this flexibility may represent the sort of taking back control originally envisaged by Johnson and other Brexiteers, it nevertheless threatens the Irish border status agreed to in 2019, thereby putting the government in breach of the Withdrawal Agreement and international law.

Johnson has faced pushback from EU negotiators and from within his own party for going ahead with the bill. On November 9th, the bill was overwhelmingly defeated in the House of Lords, but Johnson has signalled intentions to revise slightly the bill, while proceeding apace with its law-breaking elements.



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How does the incoming Biden Administration affect the thinking around the Internal Market Bill?

President-Elect Biden cares about what happens in UK-EU negotiations, whereas it is not clear to what extent President Trump does or did care. In most ways, Biden is the opposite of Trump, but especially in foreign policy. Biden served in the US Senate for decades and has developed significant expertise in negotiation and foreign policy. Whereas President Trump sought to take a wrecking ball to the established order of multilateral treaties and institutions, Joe Biden very much seeks to preserve it. And he clearly believes that the Internal Market Bill, possibly followed by a no-deal Brexit, would have destructive consequences for the Good Friday Agreement and peace in Northern Ireland. But what can the incoming president actually do to steer Downing Street in his preferred direction?

What the victory of Joe Biden does for the Brexit negotiations is effectively add a stern and carefully scrutinising observer. Whereas Donald Trump would have stood on the sidelines and cheered Boris Johnson on to deliver red meat to Brexiteers with rebukes to Michel Barnier and the EU negotiators, Joe Biden will be looking to ensure that a trade deal between the EU and UK is achieved, thereby avoiding a hard border in Ireland and preserving the integrity of the Good Friday Agreement. Of course, Biden will still be the president-elect by the time the UK formally leaves the EU on January 1, 2021, so Biden can only leverage the promise of future action (or inaction) as a carrot or stick for the Prime Minister. Johnson's government is eager for a trade deal with the US, so doing the right thing here in the eyes of the US might be rewarded further down the road. Conversely, taking actions that lead to a no-deal Brexit and a hard Irish Border will eliminate the prospect of a US-UK trade deal happening anytime soon.

Given this political reality, it would seem that the Prime Minister would be pragmatic and remove the offending clauses from the Internal Market Bill. After all, the list of those clamouring for such an excision includes EU negotiators, Joe Biden, Tory backbenchers and a fairly overwhelming majority in the House of Lords. Additionally, the Prime Minister has had four and a half years to come to terms with the fact that preventing the re-establishment of a hard land border means keeping to some degree the EU Single Market in Northern Ireland and ceding some sovereignty to the EU. The Prime Minister cannot have it both ways.

But Johnson appears determined to move forward with the bill intact, even as some of the loudest pro-Brexit voices in his government, such as Dominic Cummings, exit Downing Street. It is not clear if he is embracing a negotiating strategy that borders on reckless, less than two months before the transition period ends, or if he really believes that the Internal Market Bill will prevent a hard Irish border, as he has maintained. Time is running out for him to convince Michel Barnier and now Joe Biden as well, which seems an increasingly impossible task. If he is unable to convince them of the value of the Internal Market Bill, the UK will be more likely to head towards a no-deal Brexit and the honeymoon with the Biden Administration will be over before it can begin.

This article gives the views of the author, and not the position of LSE Brexit, nor of the London School of Economics. Image by Eric Haynes, (CC BY-NC-ND 3.0).