

4.09 pm

Lord Howell of Guildford (Con)

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My Lords, I declare an interest as an adviser to two major Japanese companies.

We have heard three impressive speeches from one point of view, and it is no surprise that I shall strike a slightly different note in what I have to say about the problems we confront. I shall vote against the proposal for yet another committee—we seem to live in a world of committees—and against the opposition Motion because it aims at the wrong target at the moment. There is no sufficiently deep thought behind it and, frankly, I do not think it does credit to the great social democrat element in the Labour Party which is vital to the nation's political health, or used to be. It is wrong because the whole idea and concept of a crude, tear-away, “one leap and we're free” Brexit on or by 31 October is, as I shall show, impossible. It is a chimera, and shouting about deadlines and delivery, however loud, will not make it otherwise.

The reasons for this basic reality are twofold: there are political aspects and there are technical aspects. On the political side, first, it is obvious that the other place will move heaven and earth to prevent a crude, break-away no deal. Secondly, there are just too many inescapable legislative aspects to unravel to make it possible in the time available before 31 October. We just cannot expect systems of law and procedures which have grown together over 45 years, however irritating and pointless they have become, to be wrenched apart or replaced in a few weeks or days. Thirdly, a walk-away no-deal Brexit on 31 October requires half a dozen or more major Bills, according to the House of Commons Library, simply to make it possible to proceed lawfully in daily business covering trade, agriculture, fisheries, immigration rules, social service administration, financial services and a whole lot else. It is physically impossible to fit all that in before the October date. Those are the political facts. They are opinions really, but they are certainly called facts.

However, it is the technical impossibilities of a no-deal exit in the hard, brutal sense which are even more interesting and conclusive. If on 31 October we leave the Lisbon treaty complex for good under the Article 50 procedure, we remain by default within the European Economic Area agreement treaty, which is a multilateral treaty between states. No process to withdraw from the EEA under

Article 127 has been triggered, whatever some Brussels lawyers, or indeed our own Civil Service advisers, may say. We remain as a contracting partner within the EEA treaty structure, which means participating provisionally, after leaving on 31 October, in the single market and leaving whenever we chose later, having given 12 months' notice. That timing would be entirely up to us.

I ask your Lordships to give thought to some of the comments of the noble Lord, Lord Owen, who is not in his place, who has gone into this very profoundly, that for a temporary or provisional staging post post-Brexit, this is a quite comfortable place to be. It gives us a just as good—in fact, a better—space than the much-disliked withdrawal treaty and provides extensive freedoms to tackle the next phase of all the key issues, both security and economic, in the period ahead. In this period, we can have unrestrained powers to make treaties and trade agreements, just as Norway has in the EEA. We can carry on setting our global agenda. We can duly leave the EU by 31 October and the EEA by, say, 31 December 2020, but it would be entirely our say-so, not anybody else's. We can start the long process of fisheries and agricultural reform on our own lines. Our trading terms with the rest of the EU will remain tariff-free in the single market for the interim transition, while we design a new FTA with Europe, so there is no immediate disruption and smashing up of supply lines. We have the time and flexibility to complete our practical and sensible immigration controls, which are badly needed.

The ECJ has no locus in the EEA, although we would be temporarily under the EEA court's much lighter, consensus-based jurisdiction. We would pay the EU for our legal obligations on leaving, as is proper, but buy only into the other EU programmes that we want to join. We would have time to sort out the hopeless bind into which Dublin has talked itself, where simultaneously it must install border controls at the insistence of Brussels, as an EU member, when of course that is the very last thing that the Dublin Government want to do. There were always ways round this dilemma, even with existing technology—let alone new technology—but they were always going to take time to work out. I agree with many in this House who believe that we should be generous and helpful to the Irish Republic in its agonising choice. Our membership of the EEA for 18 months would give time for that.

The essential point to grasp is that it is going to happen anyway, and by default. Calling it a no deal is a complete misnomer, which is why I question the opposition Motion. Even if nothing is done, we become—for a limited time—a non-EU member of the EEA, giving notice of our intention to leave in due course.

This is where we will find ourselves, like it or not. If Brussels tries to force us out of the EEA treaty we will have ample recourse for this, frankly, unreasonableness through the Vienna Convention on the Law of Treaties. Why should it do that? This orderly and gradual procedure is utterly in its interests, step by step. The silly mistake of the two prime ministerial candidates is to keep depicting, in blood-curdling terms, what might happen as a no deal when, in fact, a most elaborate set of deals and new arrangements will have to happen once we withdraw from the EU treaties on 31 October. It reconciles the 31st imperative with realism, orderliness and a step-by-step approach.

I know—and others have observed and will observe—that Boris Johnson has said that the chances of a hard no deal happening are a million to one against. He is wrong. There is no chance at all of a hard-line no deal. No such thing exists or can occur. In fact, the whole vocabulary of hard Brexit versus soft Brexit, so beloved by the BBC and others, is going to become irrelevant and redundant against what actually will happen if we just move on to a fixed transition period, provisionally within the EEA for 18 months or so, with a complex series of deals unfolding.

If the ERG crew in my party in the other place cannot accept this near-default reality position under a new leader and would prefer suicide, then they are to be pitied. A general election would certainly follow, wiping most of them away and leaving them to be condemned by history. As for the opposition Motion before us, instead of this sterile jousting about something that cannot happen, we should remember something that JS Mill wrote long ago about our politics that, when all is said and done, the contending parties of this nation share the truth between them.