

What we now know and what we don't know

Mrs May has finally delivered her much-awaited speech setting out her Brexit plans.

So what do we know?

We know that she has set herself a very ambitious timetable if she is to secure a deal within the two-year timescale stipulated by Article 50 of the Lisbon Treaty, especially as she has promised a Parliamentary vote on the final deal.

Some of the points she mentioned come as no big surprise. We will no longer be subject to the European Court of Justice. *"We will not have truly left the European Union if we are not in control of our own laws"*, she said. We could also have taken it as read that she does not want to see any hard border reinstated between Northern Ireland and the Irish Republic.

It was no surprise that she expressed a determination to restrict immigration, openly acknowledging that it was a big concern for many during the referendum campaign. *"The message from the public before and during the referendum campaign was clear: Brexit must mean control of the number of people who come to Britain from Europe. And that is what we will deliver."*

So how does she propose to deliver this greater control? The balance between immigration control and access to the Single Market was the most keenly-awaited aspect of the speech. The answer is that she wants maximum access to the EU for our companies without being a member of the Single Market. The Norway and Liechtenstein options appear to have gone out of the window. *"I want to be clear. What I am proposing cannot mean membership of the Single Market...Being out of the EU but a member of the Single Market would mean complying with the*

EU's rules and regulations that implement those freedoms, without having a vote on what those rules and regulations are. It would mean accepting a role for the European Court of Justice that would see it still having direct legal authority in our country. It would to all intents and purposes mean not leaving the EU at all."

So what will replace our single market membership which will enable us to maintain our trade with the EU? These were her words:- *"Instead we seek the greatest possible access to {the single market} through a new, comprehensive, bold and ambitious Free Trade Agreement. That Agreement may take in elements of current Single Market arrangements in certain areas – on the export of cars and lorries for example, or the freedom to provide financial services across national borders – as it makes no sense to start again from scratch when Britain and the remaining Member States have adhered to the same rules for so many years....I ...want tariff-free trade with Europe and cross-border trade there to be as frictionless as possible."*

However, things start getting a bit confused at this point. *"I do not want us to be bound by the Common External Tariff. These are the elements of the Customs Union that prevent us from striking our own comprehensive trade agreements with other countries. But I do want us to have a customs agreement with the EU. Whether that means we must reach a completely new customs agreement, become an associate member of the Customs Union in some way, or remain a signatory to some elements of it, I hold no preconceived position. I have an open mind on how we do it. It is not the means that matter, but the ends."* Her options as far as the customs union is concerned may be very limited. Interviewed on BBC Radio Four's *World At One* programme, the German MEP Elmar Brok was adamant that there could be no "associate membership" of the Customs Union.

Mrs May did not go into too much detail about future cooperation with the EU on criminal justice issues. *"A Global*

Britain will continue to cooperate with its European partners in important areas such as crime, terrorism and foreign affairs....With the threats to our common security becoming more serious, our response cannot be to cooperate with one another less, but to work together more. I therefore want our future relationship with the European Union to include practical arrangements on matters of law enforcement and the sharing of intelligence material with our EU allies." Hopefully the end of our membership of Europol, no more welcome for any *Eurogendarmerie* on UK soil and the end of our involvement with the flawed European Arrest Warrant.

Her insistence on a phased approach – an orderly Brexit (the final point in her speech) – suggests that she is keeping some cards up her sleeve. She insists that *"it is in no one's interests for there to be a cliff-edge for business or a threat to stability"* and although ruling out "unlimited transitional status" she did not specifically exclude a limited transitional arrangement.

Furthermore, although rejecting EEA membership, she said nothing about a shadow EEA arrangement – in other words, behaving as if we are in the EEA, which is an agreement and not an organisation. This would mean applying EU standards to all our exported goods. As she plans to repatriate the *acquis*, this is by no means impossible as the EU standards would still apply. Under the rules of the World Trade Organisation, if exports conform to the standards of the country that it is being exported to, their entry cannot be refused. Since 1992 the EU has been legally bound to accept global standards, so if it refused to do so, we could take it to court.

Another option which has not been openly discussed but should not be ruled out would be to use Australia's relationship with the EU as a model. In 1997, Australia's government signed a joint declaration on EU-Australian relations, followed two years later by a Mutual Recognition Agreement. The UK could do likewise, or make a unilateral declaration, up to and

including a commitment to full regulatory harmonisation.

In short, there is more to come. She has clearly not revealed her hand totally and some commentators reckon that the what has been dubbed a “hard” Brexit may turn out, as further details are revealed, to be not as “hard” as some have concluded. Anyway, we will await further developments with interest.