

Reasonable or unreasonable?

It will have come as no surprise to many keen observers of the Brexit process that the fourth round of talks ended this week ended with Jean-Claude Juncker, the Commission President, saying that it would take a “miracle” for Brexit talks to progress quickly enough to persuade the EU to start discussing a trade deal any time soon. This follows on from Michel Barnier saying the same thing a day earlier.

It is the usual story. An optimistic David Davis speaking of encouraging progress followed by a more negative slant from the EU side.

The divergence in assessing the state of play goes right back to Davis and his team agreeing to the EU’s negotiating schedule, which demanded that progress had to be made on the rights of EU citizens living in the UK, the Irish border question and the financial settlement, or so-called divorce bill, before the issues of trade would be discussed.

Was it reasonable or unreasonable for the EU to take the initiative in proposing a schedule? Hard to say. After all, they never wanted us to vote to leave. On the other hand, we were not bound under Article 50 to agree to their schedule, but for better or worse, we did.

So what of the three demands? The size of our divorce settlement was always going to be a contentious issue. Some would argue that we shouldn’t pay a penny after Brexit day while others are willing at least to concede that we should honour our obligations up to the end of the EU’s seven-year budget cycle, which takes up to 2020. There is even a huge gap between the EU’s demands and the generous figure which Mrs May has indicated she is willing to pay – £50 billion – and this is higher than the carefully-researched study by the Institute of Chartered Accountants of England and

Wales, which comes out with a figure of £28 billion, including spending which has been authorised but not incurred. The EU is unhappy with our foot-dragging, but given that Mrs May's alleged offer was a generous gesture to try and unblock talks, if it doesn't satisfy the EU, they are definitely the side who are being unreasonable.

The most unreasonable of all demands is that any agreement regarding the legal status of EU nationals living in the UK after Brexit includes a role for the European Court of Justice. This is quite frankly absurd. If the UK insisted on UK law and the UK courts determining any aspect of the lives of UK expats in, say Saudi Arabia, the Saudis would tell us, to quote Boris Johnson (or was it Philip Hollobone?), to "go whistle". English Common Law means just that – it gives common treatment to all UK residents including non-nationals. We did make an exception in the Middle Ages, with the clergy subject to Canon Law instead and the general population didn't like it one little bit, especially as monks and priests were able to get away with crimes for which the rest of the population would be punished. There is no need to create another exception now. Our legal system is fair, with plenty of checks and balances. No EU citizen living over here should feel they are living in a tyrannical, unjust country

The question of the Irish border, however, is another matter. The Irish republic joined the EEC, as it was, along with the UK in 1973. The two countries' economies were – indeed, still are – closely linked and for the Irish to have kept out while we joined the European project would have caused immense problems. When the Irish joined the €uro, they did so in the expectation that we would follow suit. We did not, nor have we abandoned imperial measurements as they have. They have consistently elected governments which are led by EU enthusiasts. By contrast, most of our Prime Ministers since 1973 have been at best lukewarm towards the EU apart from Ted Heath and Tony Blair. In spite of these divergences, however,

we share a common language, a common genetic ancestry and several hundred years of common history. More importantly as far as Brexit is concerned, we will soon be sharing the only land border between an independent UK and an EU member state.

It is true that the EU as a whole would suffer proportionately less than the UK from our crashing in March 2019 without a trade deal, but some individual states would take a big hit, with Ireland topping the list. No one wants a “hard border” and everyone wants trade to continue to flow freely between the Republic and Northern Ireland but, as Michel Barnier keeps pointing out, we become a “third country” in 18 months’ time. It is one thing to insist that we cannot go back to the days before the Good Friday Agreement but quite another to come up with a workable arrangement which is acceptable to Dublin and Brussels. So far, the EU negotiators have not heard anything from their UK counterparts which provides the basis for a future agreement. Their impression is that, 15 months after Brexit, the UK has not got to grips with the issues involved in striking a deal on the Irish border question. If this is true, there are good grounds for the EU to say we are being unreasonable.

There are other areas, however, where the EU – or at least, some of its senior figures – is being very unreasonable. The over-the-top reaction to Michael Gove’s denunciation of the 1964 London Fisheries Convention is one good example. Another is the behaviour of José Margallo, the former Spanish Foreign Minister, who has been ramping up the Gibraltar issue, claiming that Gibraltar will eventually have to welcome dual sovereignty for Spain and spreading misleading statements about a proposed meeting with Fabian Picardo, Gibraltar’s Chief minister.

Of course, if, as claimed by one reliable source, staff are quitting the Department for Exiting the European Union “in their droves”, this isn’t getting us any closer to address the issues where some work is obviously needed by the UK side.

There is a good argument to be made that some EU demands are very unreasonable, but equally, a strong case can be made that thus far, our side's approach to these difficult negotiations has left a lot to be desired.