

# “Sufficient progress” or breakthrough?

The news that an agreement has been reached between our negotiating team and the European Union has been trumpeted as a “breakthrough” by the mainstream media.

The text of the joint report is available [here](#) and on reading it through, you will note that it amounts to nothing more than a statement of intent – an agreement to have an agreement. Nothing is set in stone, even assuming that the European Council will be happy with the document. Most importantly, however, it should enable the Brexit negotiations to move on to the important area of trade talks in the New Year.

Let’s have a quick recap:- In order to move on to “Phase 2” of the talks, the EU was not insisting on a deal on the three points it insisted needed to be discussed first – namely the rights of EU citizens living in the EU, the divorce bill and the Irish Border issue, merely that “sufficient progress” needed to have been made on these issues and Jean-Claude Juncker has decided that such a point has indeed been reached.

The document is distinctly lacking in detail. No exact figure for the divorce bill is mentioned. In broad terms, we will honour our commitments up to the end of the EU’s seven-year budget in 2020 and our shareholding in the European Central Bank will be reimbursed on withdrawal. The options for voluntary participation in certain EU projects have been left open. No surprises here. Reports elsewhere suggest a figure of £35 to £39 million – considerably lower than the EU’s initial demands.

Neither is there anything unexpected in the wording of the section on EU citizens’ rights. There remains some ambiguity over the “extraterritoriality” issue – in other words, that EU

citizens resident in the UK being subject to the EU law (including the European Court of Justice) and not to UK law. The document contains a rather vague statement that , “UK courts shall therefore have due regard to relevant decisions of the CJEU after the specified date.” *{i.e., withdrawal}* but Jean-Claude Juncker’s understanding of the wording is rather disturbing. He said that, “For EU citizens, the ECJ will still be competent.” Mrs May, on the other hand. said that EU citizens living in the UK will have their rights enshrined in UK law and enforced by British courts”

On the Irish Border issue, the relevant paragraphs are particularly interesting, given that the final text would have been approved by the Democratic Unionist Party. This is what they say:-

**“The United Kingdom remains committed to protecting North-South cooperation and to its guarantee of avoiding a hard border. Any future arrangements must be compatible with these overarching requirements. The United Kingdom’s intention is to achieve these objectives through the overall EU-UK relationship. Should this not be possible, the United Kingdom will propose specific solutions to address the unique circumstances of the island of Ireland. In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.**

**In the absence of agreed solutions, as set out in the previous paragraph, the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland. In all circumstances, the United Kingdom will continue to ensure the same unfettered access for Northern**

## **Ireland's businesses to the whole of the United Kingdom internal market."**

In summary, the ball is in the court of the UK negotiators to come up with a specific solution to the Irish border problem which enables cross-border trade to continue seamlessly but without Northern Ireland ending up subject to a different set of regulations as the rest of the UK. Feargal Cochrane, an academic at the University of Kent, described the wording as "more constructive ambiguity" – a fair assessment.

Thankfully, everyone has recognised that the nature of future trade with the Irish Republic cannot be separated from the wider issue of a future UK/EU trade deal. This recognition does not, however, make the agreement of such a deal any easier – as the challenges ahead if all the relevant parties are to sign off a bespoke deal in time for it to come into force by the end of March 2019 are immense. The main benefit of the agreement reached this morning is that the many obstacles ahead of our negotiators, including the unacceptability of any transitional arrangement on the terms Mrs May is rumoured to be considering will come to the surface sooner rather than later.

In conclusion, this agreement has removed one obstacle in the talks and for this, we must be grateful. It is only one small step, however. "Nothing is agreed until everything is agreed," says the first page of the text. Arlene Foster of the DUP has warned Mrs May that Conservative backbenchers are likely to be unhappy with some aspects of the joint report, particularly over the extraterritoriality issue and any restrictions on our ability to adopt an independent trade policy on Brexit.

At least for now, however, things can move on with any thought of a separate status for Northern Ireland now consigned to the dustbin for which we must be thankful, especially given the demands for special treatment for Scotland and possibly Wales which could have followed. There is, however, a long, long

way still to go and fierce opposition to any plan to keep us more or less in the EU for a two-year transitional period will soon be manifesting itself.

“We still have a lot of work to do; the joint report is not the withdrawal agreement,” said Jean-Claude Juncker. One does not often find oneself in agreement with the President of the European Commission, but on this occasion, he never spoke a truer word.

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