The Brexit talks cannot progress until a financial settlement is reached, says Andrew Duff.

The EU continues to make fairly good progress with its preparations to withdraw from Britain on 29 March 2019. The EU machinery, I am told, has reached cruising speed.

The first substantive question to be addressed in the Article 50 talks with the UK - that of citizens' rights - is now in the hands of the lawyers.

There is less difference between the two sides than the media allows: the EU knows it has over-played its hand in demanding effectively no change to the privileged status of EU citizens resident in the UK after Brexit.
It is aware of the apparent contradiction between, on the one hand, wanting to treat the UK like a third country and, on the other, insisting on permanent, continued direct jurisdiction of the European Court of Justice (ECJ).

The extra-territorial jurisdiction of the ECJ cannot simply be presumed.

The British Home Office, for its part, knows that if its acclaimed goal of reciprocity of treatment is to be achieved, British citizens resident in the EU cannot lay claim to more rights under EU law than EU citizens who stay on in Britain enjoy under British law.

Accommodation between the two sides will be possible, however, once the outstanding questions over the interpretation and applicability of EU law in the UK are settled.

UK Prime Minister Theresa May needs to prepare herself and her party to make a major concession on the future role of the ECJ. For as long as any transitional period lasts, the ECJ will retain its current powers to ensure that relevant EU law is applied appropriately in the UK.

It's the second question - money - where trouble lurks. On 24 May the Commission published its proposals for the criteria to determine what it calls a ‘single financial settlement’.

Without a bankable promise from the UK on the budget, the European Council will never judge that “sufficient progress” has been made on phase I to allow it to trigger phase II.

Unless - and until - phase II starts, there will be no political discussions on defining the framework for the future relationship between the UK and the EU.

Without agreement on Britain's final landing zone, clearly defined and mapped out, it will be impossible to proceed towards a negotiation of the transitional arrangements. Here lies the rub.

The transition period can only be designed once it has been decided how long the UK will continue to honour its current budgetary obligations under the EU's multi-annual financial framework. The UK will also have to choose in which EU agencies and spending programmes it wants to have continued participation.

As things stand, the UK government seems concussed by the EU referendum and the 2017 general election. In such a political state, strategic thinking about the future of the country seems well-nigh impossible.

The EU27 can and should help out by making the UK an offer of a future accord that cannot reasonably be refused.
The EU has been helpful in proposing the creation of the joint Brexit committee. It should now go one step further by launching a deep reflection on the future not just of the smaller EU but of the wider Europe.

Once the German elections are out of the way in September, the EU should debate how its own prosperity and security can be reconciled with good neighbourliness.

It will become clear at that stage that the UK is no normal third country. Such a reflection exercise, even with some British participation, would change the context of Brexit and raise the chances of there being a successful Article 50 agreement in time for the EU's withdrawal from the UK on 29 March 2019.

About the author

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