

The UK needs to clarify what 'full regulatory alignment' means before the next phase of the Brexit talks



In December, EU leaders agreed to move to the next stage of the Brexit talks, but there is still a degree of uncertainty over the issue of the Irish border. [Anthony Costello](#) argues that among the most pressing concerns is the need to define the UK's commitment to have 'regulatory alignment' with the EU following Brexit. It is still unclear how the UK can leave the EU's customs union, pursue its own trading arrangements with other countries, and yet avoid the creation of a hard Irish border.



Theresa May arriving at a European Council meeting, Credit: [European Council \(CC BY-NC-ND 2.0\)](#)

On 8 December 2017, European Commission President Jean-Claude Juncker stated that Europe had witnessed a breakthrough and 'sufficient progress' in Phase 1 of the Brexit negotiations, following several days of intense political uncertainty. Uncertainty ensued after the Democratic Unionist Party (DUP) rejected the British government's initial offer of *special status* for Northern Ireland to offset the potential economic and political costs associated with Brexit for the region. As argued in a [previous post](#), the DUP's rejection emerged from a position of unionist romanticism, as opposed to functional pragmatism. Nevertheless, in retrospect, one could argue that the rejection paved the way for a potentially softer Brexit than any of us – including the DUP – initially realised.

This logic pertains to the fact that the DUP's rejection of *special status* solely for Northern Ireland has inherently constrained and weakened the UK's hard-line options for Brexit. In rejecting the deal, the DUP has unintentionally urged the British government to potentially accept *full regulatory alignment* for England, Scotland and Wales to finally settle the problematic and long lingering Northern Irish question; a question which to date has inhibited advancement in the negotiations. Therefore, for some observers, there is an opportunity for a soft, or softer Brexit on the horizon. However, one could counter-argue that as it stands, Juncker's so-called sufficient progress made in Phase 1 pertaining to the border issue is currently based on pure semantics – perhaps even naivety – and is founded on a vague promissory-note created at a time of intense political pressures and British endeavours to appear compliant.

Following the DUP's hard-line rejection of the British government's offer of special status for Northern Ireland, the UK had no other option but to commission a suitable document that outlined potential alternatives that would satisfy the EU and Ireland's interests pertaining to trade issues and the Northern Irish question. The joint report released by the UK government on 8 December 2017 states that '*agreement in principle has been reached on the package, as opposed to individual elements*'. The document set out to deal with the tenuous issues of the divorce bill, the rights of citizens and the border issue. Of the three issues on the agenda, decisions made on the divorce bill and citizens' rights provide adequate clarity and appear attractive in a contractual sense. However, the same cannot be said for the border issue.

In politically refined language, the section on the border issue – encompassing points 42 to 56 of the document – speaks positively and diplomatically about North-South issues on the island of Ireland. The section clearly expressed the UK's recognition of Northern Ireland and the Republic of Ireland's unique positions in the face of Brexit respectively. The British government make clear their aim to foster North-South relations further into the future, and to uphold the Good Friday Agreement and safeguard the peace process through a strong and workable agreement with the EU. Such recognition of these issues is most welcome. A workable Brexit simply cannot be established until these issues are dealt with effectively.

However, mere recognition by the British government on these issues tells us little or even nothing about the future state of Brexit and the path the UK will eventually take. Where a viable agreement cannot be made on UK-EU trade relations, the British government have promised to maintain full regulatory alignment between the North and South of Ireland. On first impressions, this seems to be a constructive step forward for the UK, but the concept of full regulatory alignment is neither explained, nor is the compatibility of its functional role emphasised within the document.

The British government intends to take the UK (including Northern Ireland) out of the EU's single market and customs union to fulfil their objective of establishing free trade relationships with other non-EU countries. Full regulatory alignment is their idea of a creative alternative. But any departure from the EU's customs union simply must lead to the erection of a border on the island of Ireland to protect the EU's internal market from negative economic externalities that could seep into the internal market via the UK's trading practices with third countries. At least, this is the understanding to date. So, it is questionable in the absence of an explanation of full regulatory alignment how the UK can seek to depart from the EU's customs union.

Yet at the same time, they will attempt to resist a border between Northern Ireland and the Irish Republic, as well as ensuring unfettered access for Northern Ireland to the UK's own personal customs union. Equally as questionable is the enthusiasm of European Commission President Jean-Claude Juncker and Irish Taoiseach Leo Varadkar toward the concept of full regulatory alignment, when its definition is still obscure and attempts at interpretation are mired by its very ambiguity. Neither of these two actors likely know what the concept fully means, nor are they likely to have been briefed on how this option will realistically work in the face of functional constraints. Yet, both actors profess to have observed the making of sufficient progress for talks to proceed to Phase 2. This likely profession of faith by Juncker and Varadkar is unsettling to say the least.

Vaguely, regulatory alignment means the UK will adapt its post-Brexit trading principles in line with EU rules and standards on some social and economic issues. This is all well and good, but the extent to which this is workable if the UK leaves the EU's customs union is still open to question. The policy is unlikely to easily rid the negotiations of the border issue. Again, any future free trade agreement between the UK and other non-EU countries automatically puts Ireland and the EU at economic risk. This risk is certain, if unrealistic notions of a borderless Ireland in the midst of UK departure from the EU's single market/customs union continue to make their rounds.

The UK can speak in theory on the principle of full regulatory alignment, but to what extent can the UK influence its future external trading partners to economically operate in a manner that satisfies the EU's internal market interests and secures it from potentially corrupt goods and services flowing through the market via UK-third country trade links? It can't. So a border on the island of Ireland would likely still be necessary, especially if Northern Ireland is to maintain unfettered access to the UK's own customs union. Thus, risk seems inevitable, even if full regulatory alignment is a creative step forward in theory for the UK-EU relationship.

It is important to point out that the intention here is not to *completely* dismiss the potential of full regulatory alignment, but the British government must provide clarity on its meaning. Until clarity is given we lack direction, and we must rely on independent interpretations to assess how this concept is to work under real world conditions. To date, it is difficult to recognise a reasonable compatibility between the idea of full regulatory alignment and a borderless Ireland in the absence of definitional clarity.

There are many questions left unanswered on this matter, and it is unwise for British and EU negotiators to approach Phase 2 of the negotiations without fully settling the border issue. After all, the border issue will come to be the defining variable that determines the future state of UK-EU relations and the nature of Brexit itself. Therefore, one urges Irish and EU negotiators to seek clarity on the meaning of full regulatory alignment from the British government and to establish how it will be compatible with the avoidance of an Irish border. This is imperative prior to entering Phase 2 of the negotiations.

[Please read our comments policy before commenting.](#)

Note: This article gives the views of the author, not the position of EUROPP – European Politics and Policy or the London School of Economics.

About the author



Anthony Costello – *University College Cork*
Anthony Costello is a Lecturer at University College Cork.