

## Blueprint for the Brexit negotiations: A signal of unity by the EU-27

SPECIAL SUMMIT IN BRUSSELS ON 29. APRIL 2017

**At a special summit on 29 April 2017 in Brussels, the Heads of State and Government of the EU-27 voted in favour of the guidelines for the forthcoming withdrawal negotiations with the United Kingdom. Although the Member States and EU institutions had exchanged extensively on the guidelines in advance, the closeness of the summit participants was surprising for many observers. After a few minutes and without real discussions, the draft was approved. At the same time, however, the statements of decision-making makers on both sides of the English Channel-illustrate how different the views on the process and the contents of the exit talks are. The European Union and the United Kingdom are therefore likely to face difficult negotiations. On the sidelines of the special summit, the controversial Hungarian Higher Education Act also led to a debate between the Chairman- of the European People's Party, Joseph Daul, and the Hungarian Prime Minister, Viktor Orbán.**

### 1. Brexit guidelines

Background: On 29 March 2017, the British Prime Minister Theresa May sent the United Kingdom's official withdrawal request to the President of the European Council, Donald Tusk, with which, in accordance with Article 50 of the Treaty of the European Union (TEU), the two-year long withdrawal period began. In a first reaction, the European Council had regretted Britain's intention, but at the same time was well-prevalent and united for this process. President Tusk, already on 31 March 2017, was presenting a first draft of the EU guidelines for the forthcoming negotiations which held general po-

sitions and principles of the EU. The European Union also in positional terms is well-prepared: the head of the Commission's 'Article 50 Task Force', Michel Barnier, will lead the negotiations as the chief negotiator of the European institutions, with a permanent and detailed report to the Commission, the European Council, the Council and the European Parliament. For the Parliament, the group leader of the ALDE Group, Guy Verhofstadt, will take part in the actions and pay attention to the compliance of the negotiations with Parliament's ideas, as well as its involvement in all important arrangements.

So far, the British negotiating strategy can be read mainly from two documents: In a keynote speech on 17 January 2017 in London's Lancaster House, Theresa May presented twelve focal points. Most importantly, May was pronouncing that the United Kingdom would withdraw from the Euro-European internal market as well as from the EU customs union. The twelve focal points were carried out in a white paper by the British Government on 2 February 2017: The case-law of the European Court of Justice (ECJ) should no longer be applied; a strengthened control of immigration (also from the EU-27) is sought; the rights of British citizens on the continent and those of EU citizens in the UK are to be protected; the aim is to ensure the freest possible trade with European markets; finally, there should be a strong cooperation between the UK and the EU to combat terrorism and organised crime.

The white paper makes clear that the British government wants a 'hard Brexit'. Prime Minister May obviously interprets the result of the British EU referendum as a vote against an ongoing membership in the European single market and its associated free

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movement of people, and she sees the jurisprudence of the ECJ as contradictory to British interests. The influence the re-election of the British House of Commons on 8 June 2017 will have on the British negotiations remains to be seen. The Conservative party is highly likely to be able to significantly expand its currently scarce parliamentary majority. In this case, Prime Minister May would probably have greater political leeway for her talks to the EU, as she in the future would be less dependent on the votes of EU opponents within their party ('Hard Brexiteers'). Elements of a 'soft Brexit' – that is to say, a very close relationship with the EU – are more likely to choose with this scenario.

Both for the EU and for the United Kingdom, there is a lot at stake in the upcoming negotiations:

-The United Kingdom and the EU-27 have a high level of trade. In 2016, 44% of UK exports in goods and services went to the EU-27, contributing 12 per cent to the British gross capita. In addition, 53% of UK imports came from the EU-27. As a result, Great Britain relies heavily on access to the European market. Studies therefore agree that the economic damage of a Brexit in relative terms for the United Kingdom will be larger than for the EU-27; all the more so if a disorderly Brexit in case of failed negotiations on an exit agreement should arise.

-However, there is a completely different way to assess foreign affairs and security considerations. The UK still is a great military power and has a large, experienced and influential diplomatic apparatus, a ready-to-use nuclear arsenal and a permanent seat in the UN Security Council. In addition, the expertise of the British secret services is regarded as leading in the world. In short, the EU-27 must be interested in a close cooperation with the United Kingdom in security and defence matters.

The British Prime Minister, for these reasons, may be tempted to link concessions in the area of security with concessions in future economic relations. Decision-makers of

the EU-27 commented on these games of thought that one would not respond to such blackmailing. There were two other events immediately before the EU special summit which have illustrated how difficult the forthcoming exit negotiations could be:

The British government initially blocked the traditional midterm review on the morning of 26 April 2017. This provides for a review of the EU budget at the halfway point of the seven-year financial period. Among other things, due to the ongoing refugee crisis and the increased terror threats in the EU, several billion euros should be regrouped. However, referring to the forthcoming new election of the House of Commons, the British government expressed its concern that it would not be able to take any further decisions until then. EU representatives interpreted this as a tactical manoeuvre and as a foretaste of the upcoming Brexit negotiations.

In addition, Commission President Jean-Claude Juncker, on the same day and with a small delegation, travelled to London to have dinner with the British Prime minister. According to reports from those present, there were serious divergences in two areas: firstly, the British government wants to hold parallel talks on the exit and on a future free agreements. The EU-27 categorically rejects this. Secondly, the EU calls on the United Kingdom to meet payment commitments of about 60 billion euros, which the country has entered as an EU member. The British Government has, however, rejected this demand so far, since it does not see a legal basis for it.

### **Results of the Special Summit**

The vote of the Heads of State and Government on the guidelines for the Brexit negotiations indeed was a mere formality. After a few minutes, the bill, which was drawn up in particular by Donald Tusk, his Chef de Cabinet Piotr Serafin, the Secretary-General of the Council, Jeppe Tranholm-Mikkelsen, and the head of the Council taskforce, Didier Seeuws, was unanimously agreed. The

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EU-27 had shown an "outstanding unity", both concerning the content and the sequence of the negotiations, Tusk declared immediately after the summit: Before anything else, agreements must be reached on the rights of EU citizens, on financial opportunities and on border issues, especially regarding the Republic of Ireland. Here are the guidelines at a glance:

-Core principles: The United Kingdom will remain a close partner of the EU in the future. However, the country cannot enjoy the same rights and benefits without at the same time fulfilling the obligations of a Member State. A so-called 'cherry-picking' is not possible. For example, a functioning internal market does not give room for any exceptions for certain sectors. Moreover, the EU is only negotiating as a single bloc, whereas separate negotiations between the United Kingdom and individual Member States will not exist. Until the exit, the United Kingdom will be able to enjoy all rights and benefits, but must also fulfil the obligations of a Member State.

-Negotiation methods: On the day of leaving the EU, all the corresponding contracts lose their validity for the United Kingdom. The exit negotiations are therefore focused on establishing a legal clarity for the citizens, companies and international partners to resolve the legal obligations of the UK and to avoid any legal uncertainty. Deadline for this is March 29, 2019. Future relations are to be regulated only after the exit. They will be taken into account in the exit agreements, however, only if the negotiations have reached a sufficient stadium. The existence of this point of time is determined by the Council.

-Standards for the Exit treaty: Priority in the negotiations is given to the protection of all EU citizens, especially those from the EU27 who live in the UK, and of the British who are in the EU27 countries. These peo-

ple had built up a life in the acceptance of European rights and now needed special protection, the argument goes. In addition, it is to be ensured that the trading relations with non-European countries are maintained without any problems, as is cooperation with international partners and organisations. Judgments of the ECJ should for a certain transitional period also apply to the United Kingdom after Brexit. In addition, far-reaching financial claims are to be made to London.

-Future relations: Close relations between the UK and the EU are of mutual interest. The EU therefore follows the UK's desire for a free trade agreement and will continue to work closely with the country in the fight against terrorism and organised crime, common defence and foreign politics. For Gibraltar, the results of the negotiations are only applicable if both the United Kingdom and Spain have expressly agreed on it. In the case of a possible Irish reunion on the basis of the 1998 Belfast Agreement, Northern Ireland could automatically become part of the EU.

### **Commentary and Outlook**

The withdrawal of a Member State from the European family of States is without any precedence. The EU and the UK are facing a legally extremely complex, time-demanding and politically very difficult process. Although the EU has a number of political and economic agreements with third countries, the future relationship between the EU and the UK should, according to both sides, go beyond any ordinary agreement with a third country. It is circulating the concept of the 'free Trade Agreement plus' which could, in addition to common economic criteria and standards, be applied to the areas of security, defence, information exchange and science.

First, however, there should be a relatively rapid consensus on a point of interest to both parties: the rights of the citizens of the EU-27 living in the UK as well as those of

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the British citizens in the EU-27 are to be defined, and any form of discrimination has to be avoided. Currently, about 3 million citizens of the EU-27 live and work in the United Kingdom; on the other hand, 1.2 million British citizens live and work in the EU-27. Also, any form of legal uncertainty for European companies in the UK and for British companies in the EU should be eliminated as soon as possible.

Apparent is the enormous time pressure the negotiators are facing. The maximum of two years of withdrawal negotiations in accordance with Article 50 of the TEU will in fact only be about 15 months. First, there will be the election of the British Parliament on 8 June 2017 and the subsequent formation of a new government. In addition, Michel Barnier has repeatedly announced that he would like to conclude the negotiations by October 2018, so that there will be enough time before the European elections - taking place in spring, 2019 - for the ratification of the exit agreement by the Council and the European Parliament, as well as by the UK parliament.

Several statements from the EU, saying that they first want to negotiate the exit agreement with the United Kingdom before entering negotiations on a trade agreement, probably are more tactical in nature and will hardly be maintained in political practice. A rapid and comprehensive free trade agreement with the EU ("a bold and ambitious free Trade Agreement", in the words of Theresa May) is a key concern of the British government. Article 50 (2) TEU also provides that the exit agreement should take account of the framework for the future relationship of the leaving country with the Union. This passage has now also found its way into the guidelines adopted by the European Council. However, the EU will insist to first find an agreement with Great Britain on the main points of the exit.

As a future free trade agreement will be a so-called mixed agreement, it will have to be agreed by the Council, the European Parliament, the UK parliament as well as the national (and some regional) parliaments of the EU-27. Given the already short time

frame for the exit process, this seems hardly realistic. It is therefore highly probable that the EU and the United Kingdom, at the end of the two-year deadline, will agree on a multi-annual transition period, until a free trade agreement can be reached.

Not negotiable for the EU, however, is a limited access by the United Kingdom to the European internal market, without the country recognising the fundamental principles of this single market, above all, the free movement of people and the binding case-law of the ECJ. In this question, the European Council is very determined: the EU will not compromise, because otherwise there would be a signal effect to other Member States, saying that the benefits of the internal market are reachable even without accepting the duties and burdens of an EU membership. From an EU perspective, the Brexit must be associated with an economic and political price for the United Kingdom: a special treatment of the country would also be highly likely to weaken the EU's institutional framework, because individual Member States could aspire (further) opt-ins or opt-outs.

So far, the EU has been appearing very unitedly with regard to the Brexit negotiations. This will continue to be important in the future so that the Union can enforce its interests as a collective body. However, the EU's negotiating power threatens to be eroded if individual EU-27 countries were tempted to take up bilateral negotiations with the UK. This danger exists mainly in the light of the fact that individual Member States (Ireland, the Netherlands) or individual regions (Flanders) would be particularly affected by an uncontrolled Brexit due to their economic orientation. Poland also has a particularly high number of citizens living in the UK; Ireland is very keen to keep the border to Northern Ireland as open as possible; and Spain, finally, is calling at least for a co-control over British Gibraltar.

In view of this complex situation, neither a failure of the Brexit negotiations can be ruled out at the moment, nor is the hitherto uniform line of the EU-27 set in stone.

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Just before the European Council of 29 April, a traditional pre-meeting of all EU Heads of Government of the European People's Party (EPP) was held, to which the Hungarian Prime Minister Viktor Orbán had been explicitly invited. The EPP Board wanted recent developments around the new Hungarian Higher Education Act and a national consultation to be discussed, both of which had led to Europe-wide criticism of Orbán, his government and his party (Fidesz):

The Hungarian Higher Education Act provides, among other things, stricter conditions for the Central European University, funded by the American billionaire George Soros. Critics – also within the EPP – see this as a threat to academic freedom in Hungary. The European Commission had initiated infringement proceedings against Hungary on 26 May 2017 on the basis of this Act.

In addition, Orbán is in criticism because of the campaign he initiated on 1 April 2017, "Stop Brussels!" On the basis of six rather suggestive questions, the Hungarian population is to be consulted about European immigration and refugee policy. International observers regard the campaign as anti-European and as motivated by domestic political considerations.

The EPP Group Chairman in the European Parliament, Manfred Weber, stated in a newspaper interview in the run-up to the European Council summit that a membership of Fidesz in the EPP does rely on certain standards. Also for Viktor Orbán there are "red lines", according to Weber. Right after the EPP summit, an agreement was achieved. EPP chairman Joseph Daul stated that the continued EU-critical rhetoric of the Orbán government has reached a "level that we can no longer tolerate". The EU-European People's Party announced at the end of the consultations that Viktor Orbán had promised to meet the demands of the European Commission and to implement them within the specified deadline.