

COUNCIL SUMMIT

The European Council: Brexit, refugees and beyond

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The European Council that took place on February 18-19 dealt with two important issues which could shape the evolution of the EU in 2016 and much beyond: the refugee crisis and the agreement between the UK and the EU to be offered at the Brexit referendum. On the first issue there were few advances with no major surprises, and the next step will be the meeting with Turkey on March 6. On Brexit, there was an agreement broadly in line with the UK demands, which weakens the impulse on European integration but is not a dramatic step back. The referendum, which has been called for June 23, is a close call and will likely be played on broader issues than the ones agreed this weekend.

1. Decision of Heads of State or Government concerning a new settlement for the UK within the EU

The **European Council decision meets the four requests from the United Kingdom on a letter to the Council on November 10**, as expected. The decision **will not take effect until the UK government has decided to remain a member of the European Union**.

Specifically, on the issues raised by the UK, the draft agreement relates to the following issues:

1. **Sovereignty**. The proposal explicitly addresses British's concerns about the **"ever closer" union** by recognizing that given its specific situation **the UK is not bounded by this compromise**. This recognition will be included in the next reform of the EU treaties. Hence, this reference is compatible with different degrees of integration among Member States. Furthermore, the "ever closer" reference does not entail a legal basis to extend the interpretation of the abilities of the Union to enforce its decisions. The UK also asked for a greater role for national Parliaments, a stronger commitment on the EU to the principle of subsidiarity and the recognition that national security is a national responsibility. The **deal highlights that most requests are already included in the Treaties or the EU secondary legislation, but provides a "red card" system** that would allow a group of national Parliaments to veto a piece of EU legislation (55% of countries if their national Parliaments agree), although this does not apply to existing EU legislation.
2. **Competitiveness**. The UK requests here were **the easiest to meet**, as they are broad objectives mostly shared by other countries: strengthening the internal market (to adapt it to a changing environment), lowering administrative burdens and compliance costs (especially for SMEs) and repealing unnecessary legislation.
3. **Economic governance** related to the relationship between eurozone member states and the countries that opted-out from the euro. The deal makes clear **that non-eurozone countries will not have to comply with EMU rules and their taxpayers' money will never be used to support the eurozone**. This is a reasonable request. Nonetheless, controversy arisen from the necessity of single rules in order to ensure a level-playing fields (particularly relevant for financial services):

- The deal remarks **the need to apply the single rulebook to all financial institutions in the Union**. And this is welcomed, as it will **ensure a level-playing field for the internal market**. Nevertheless, the deal states that single rulebook will be applied more uniformly by the ECB or SRB, as opposed to the application by national authorities of Member States that do not belong to the Banking Union. **To this end, a “new set of provisions” will be included in the single rulebook**. These provisions will allow non-participating members for more flexibility on regulatory issues.
 - Additionally, the deal states that the implementation of supervision and resolution measures for non-eurozone countries is a matter of their own institutions. However, **such implementation should always be subject to the consolidated vision of the group**. The deal also highlights **the need to further deepening the economic and monetary union**, recognizing that this process is not compulsory but voluntary for Member States which are not part of the Eurozone. Those members which decide not to participate in this integration **should not create obstacles to this process**.
 - Finally, the deal states that discrimination based on currency issues will be completely prohibited. No barriers to trade between Member States should be constituted, with respect to non-eurozone members.
4. **Immigration**. This was the most sensitive area, related to several measures to reduce net inflow of immigrants and, especially, their welfare cost. The Council insists that there are mechanisms incorporated in the Treaties that deal with the issue, but also acknowledges the right of member states to define the fundamental principles of their social security systems and to enjoy a broad margin to define and implement their social and employment policy, including setting the conditions for access to welfare benefits. The deal provides that the UK could apply **an “emergency brake” on in-work benefits to EU workers newly arriving during a period of seven years, and an option to index child benefits** to the standard of living in the country where child resides. On the former, the limits to non-contributory in-work benefits extends for a total period of four years from the beginning of employment relationship but will be withdrawn progressively (against an initial UK request of complete exclusion). The cap on child benefits applies only to new claims made by EU workers in the host member state, but as from 1 January 2020 all member states may extend indexation to existing claims to child benefits. This measure had the opposition from some Eastern European countries (notably Poland) that required this capacity not to be applied to other types of exportable benefits, such as old-age pensions.

Our assessment

- *De facto*, the two-speed Europe was already in place, although the specific recognition that countries are not bound to an “ever-closer union” is an explicit recognition of this situation. It is a step backward, but at this stage it would have been bold to think that the UK would participate in any further integration process.
- The rule that says that 55% of countries (15 out of 28) whose national parliaments are against a EU proposal is not unreasonable from a point of view of extending democratic control to EU institutions, and in any case the ceiling of votes is large enough to ensure that it will be applied in practice very rarely.
- The provisions for more competitiveness are not specific, and respond to reasonable principles. They are not controversial.
- The deal on welfare costs for immigrants seems like an important concession to the UK, as it breaks the principle of equal treatment to workers in the UK according to nationality, and hinders the free movement of labour (although it is far from suppressing it).
- With respect to the economic governance, any differential application of the single rulebook by the ECB/SRB and national authorities outside the banking union via specific provisions confronts with the

idea of integration, damaging the internal market by creating an unlevelled-paying field. Nevertheless, the proposal explicitly argues that the single rulebook has to be applied to all banks in the Union which is still the milestone for a proper functioning of the EU. The big question is: what does “specific provisions” actually mean? Although this is part of the needed compromise, the good news is that both the single rule book and the single market integrity are kept as key elements of the EU.

- It is positive the commitment not to create obstacles for further integration by non-participating countries. Even if the convergence process respects Member States rights to not participate, such non-participating members should not create obstacles to the integration process. This is a key remark that enables participating members to continue with the deepening of the economic and monetary union, even if this path is not followed by others.

What next?

As expected, the deal covers all the UK's demands and allows Mr Cameron to defend the Remain-vote in the **referendum, which will take place on June 23**, but the British eurosceptics could see it as a minimal arrangement without binding results (not changes in Treaties). As such, the risk of a Brexit is still sizeable. **Polls point to a small advantage for the Stay option**. The large majority of members of the government, most large companies, and three large parties (Labour, Liberals and Scottish National Party) defend the Remain option, but many conservative backbenchers are on the Leave camp. In addition, the backing of the Leave option by the conservative Mayor of London, Boris Johnson, a likely candidate for Prime Minister in the next election, could carry a large share of the vote with his decision, according to some polls. All in all, the referendum is likely to be a close call and, as it usually happens with referendums related to EU matters, it will probably be debated around broader issues than those dealt with in the Council agreement, such as the economic advantages of remaining in the EU or, more generally, on cultural arguments or affection/disaffection feelings.

There was a request during the negotiations by Belgium and France that the agreement includes a “**self-destruct clause**”, i.e. in case of a Leave vote, no renegotiation was possible. In theory, this should lead to prevent voters strategically voting for Leave in the hope of getting a better deal afterwards. However, the final draft of **such clause is ambiguous**¹ on this issue and does not seem to explicitly rule out a second referendum. Despite PM Cameron's warning that the referendum will be definitive, the Leave-campaign continues to highlight the UK strategic out votes in order to obtain more concessions from the EU.

A **Brexit would imply important costs for the UK** in the form of lower confidence, very costly and long-lasting new trade agreements negotiations with the EU, an initial TTIP exclusion and greater political irrelevance in geopolitical terms at the world level. For the EU, it would put into question the whole integration process in Europe and set a precedent for other countries.

1: “4. It is understood that, should the result of the referendum in the United Kingdom be for it to leave the European Union, the set of arrangements referred to in paragraph 2 above will cease to exist” [in reference to the new settlement for the United Kingdom and specific provisions to effective management of the banking union and of the consequences of further integration of the euro area].

2. Decision of Heads of State or Government concerning migration

The European Council discussed the elements of the EU's response to the migration and refugee crisis, focusing particularly on the state of implementation of the orientations agreed in December. **The main goals are rapidly stemming the flows, protecting the external borders, reducing illegal migration and safeguarding the integrity of the Schengen area.** The Council did not advance on tangible agreements, but stressed the following points:

- The EC welcomes the news that NATO made itself available for assistance and surveillance and encourages the EU, in particular FRONTEX, to cooperate with NATO.
- The **priority remains the full and speedy implementation of the EU-Turkey Action Plan**, in order to stem migration flows and to tackle traffickers and smugglers networks. Steps have been taken by Turkey, but the flows of migrants arriving in Greece from Turkey remain much too high and the EC asks for further efforts.
- The Council urges the countries neighbouring Syria to keep providing humanitarian assistance to Syrian refugees.
- Concerning the Western Balkans route, the EC says that measures should not be taken in an uncoordinated way by Member States and that concerted actions are required.
- The EC pleads to get back to a situation where all Members of the Schengen area apply fully the Schengen Borders Code and refuse entry at external borders to third-country nationals who do not satisfy the entry conditions.
- Identification and registration facilities need to be completed to fully implement the relocation, return or readmission processes; the EC made clear that asylum seekers do not have the right to choose the Member State in which they seek asylum.

Heads of state and government postponed a comprehensive debate to the next European Council, where, on the basis of a more definitive assessment, further orientations have to be fixed and choices made.

Our assessment

This meeting has not brought much news. Neither specific nor comprehensive resolutions were made. **The main thrust of the strategy to reduce the flow of immigrants continues to be the agreement with Turkey**, which will be further discussed at an emergency **meeting on March 6 with the Turkish government** (the Turkish PM did not attend the sidelines of this Council due the terrorist attack in Ankara) and could start to be applied by mid-year. Other actions (cooperation with NATO and UNHCR, enhancing Frontex) are positive but are only complements to such strategy.

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