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Contents *Page*

European Council

Tusk re-elected European Council President as EU leaders gather in Brussels

On Thursday 9 and Friday 10 March, EU leaders gathered in Brussels for the March European Council summit of Union Heads of State or Government. The meeting was the first of its kind in 2017 and followed the previous gathering of EU leaders in Brussels on 15-16 December 2016.[1] UK Prime Minister Theresa May attended the summit but left Brussels after dinner on Thursday night so as to allow leaders of the EU27 to gather informally on Friday morning to discuss both celebrations for the upcoming 60th anniversary of the signing of the Treaty of Rome and, inevitably, her invocation of Article 50 and Britain's formal withdrawal from the EU.

Thursday 9 March

While the economy, trade, instability in the Western Balkans and defence were all prominent items on the agenda, much of the pre-amble to Thursday's meeting surrounded the re-election of **Donald Tusk** as European Council President. Despite enjoying widespread support from many of the EU's 28 leaders, Tusk's own national Government led by Poland's Prime Minister, Beata Szydło, had unusually failed to endorse him for a second term in office and instead called for Tusk to be removed from post and replaced by Polish European People's Party MEP Jacek Saryusz-Wolski. Szydło outlined her stance in open letter to the other 27 European leaders (dated Wednesday 8 March)[2] seeking allies, although as they arrived in Brussels, many re-affirmed their public support for Tusk to continue in office. Since the position of European Council President came into effect with the Lisbon Treaty in 2009, the three previous elections - those of former Belgian Prime Minister Herman Van Rompuy in 2009 and 2012, as well as that of Tusk in 2014 - were held by acclamation. Given the public opposition from Warsaw, however, the election on this occasion was put to a formal vote.

EU leaders voted by 27 to one to re-appoint Tusk for a second two-and-a-half term and, while the Treaties formally require only a qualified majority of Member States in choosing the European Council President, Polish authorities warned that a "dangerous precedent" had been set by re-electing a President that did not command the "complete trust and faith" of all of the EU's Member States. Nonetheless, Tusk will now serve a second term in office, running from 1 June 2017 to 30 November 2019 and, as such, will help guide the EU27 through forthcoming Brexit negotiations with the UK Government. Following the vote, Tusk acknowledged the "unusual circumstances" of his re-election, but thanked EU leaders for demonstrating their "solidarity" in backing him for a second term in office. He also added that he would work with all Member States, "big and small, old and young", without exception as he was "truly devoted" to a united Europe.

After the Presidential election, leaders then moved onto other business. Firstly, they held an exchange of views on the European economy with President of the European Central Bank, Mario Draghi. Tusk said that there was consensus among EU leaders that things were "getting better" in every Member State and that this proved current economic strategies were "on the right track". He added that creating more jobs for EU citizens would remain a top priority and, as well as providing the best means to tackle inequality, doing so would also "expose the myths

[1] Full conclusions from the December 2016 European Council can be found here - http://www.consilium.europa.eu/en/press/press-releases/2016/12/15-euco-conclusions-final/

[2] A copy of the letter from Prime Minister Szydło can be found here - https://www.premier.gov.pl/en/news/news/letter-of-prime-minister-beata-szydlo-to-the-heads-of-state-or-government-members-of-the.html

of the populists" and strengthen the Union moving forward. Linked to this, Tusk noted that leaders had confirmed the EU's "unequivocal" position as a "champion" of open, rules-based trade. He noted that fostering free trade deals with international partners would be central to future economic growth in Europe and he re-affirmed leaders' commitment to advancing free trade negotiations "around the world", while also defending the integrity of the EU market against unfair trading practices wherever necessary. For Tusk, the goal was for the EU to set the "global standard" for free and fair trade. On other matters, Tusk confirmed that leaders also held discussions on continued unrest in the Western Balkans. He acknowledged that "tensions and divisions" in the region had "got out of hand" but attributed these to "unhealthy external influences" and not any wavering of the EU's support for the region. Tusk underlined that the Union remained "fully committed" to the stability and prosperity of the area and called on leaders to "re-confirm the European perspective" of Western Balkan states with a view to potential EU accession in the years to come. Lastly, Tusk noted that leaders had reviewed progress being made in the area of security and defence and stressed that, since the December 2016 meeting, furthering collaboration in this field had been given "new impetus" as a strategic priority for the EU.

At the close of business, European Council conclusions - normally supported unanimously by Member States - were published, however on this occasion, they were not given the backing of the Polish Government and, as a result, were unusually adopted as "Conclusions by the President of the European Council" instead.[3] The accompanying press release simply stated that "the Conclusions were supported by 27 Members of the European Council, but did not gather consensus, for reasons unrelated to substance".

Friday 10 March

Following the unusual conclusion of Thursday's summit, leaders of the EU27 remained in Brussels for further talks on Friday. UK Prime Minister Theresa May was not present for the summit's second day - mirroring the format of December's European Council gathering - and Czech Prime Minister Bohuslav Sobotka was also absent due to attending his party's annual political conference in Prague. The 26 EU leaders present focussed discussions on the future of the Union in light of: (1) the recently published Commission White Paper on *The Future of Europe: Reflections and Scenarios for the EU27 by 2025;*[4] (2) the upcoming celebrations of the 60th anniversary of the signing of the Treaty of Rome; and (3) Brexit. It is understood that substantive talks took place particularly on whether the idea of a multi-speed Europe was a viable model for the future evolution of the Union.

Looking ahead, EU leaders will next gather in Rome on 25 March and are scheduled to meet again in Brussels for the summer European Council on 22-23 June. It is expected, however, that once UK Prime Minister Theresa May triggers Article 50, leaders of the EU27 will hold an extraordinary meeting in Brussels to establish Council negotiating guidelines. This is expected to take place in the days after the PM officially signals the UK's intention to withdraw from the EU.

[3] Full European Council conclusions can be found here - http://www.consilium.europa.eu/en/press/press-releases/2017/03/09-conclusion-pec/
[4] See Brussels Bulletin No. 532

Financial Affairs

EP's ECON Committee discusses third-country equivalence

On Thursday 9 March, the EP's Economic and Monetary Affairs (ECON) Committee held an exchange of views with the European Commission and the European Supervisory Authorities (ESAs) on third-country equivalence.

Background

Through "passporting", certain banks are able to provide banking and financial services throughout the Union. Passporting rights are only available to financial institutions established in EU or EEA Member States. Third countries (that is, countries not part of the EU or EEA) can ask for equivalence treatment by the EU. An equivalence decision sets out the operational rights or treatment of foreign banks in the EU. The European Commission, through the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), carries out technical assessments of equivalence.[5]

On Monday 27 February, the Commission published a Staff Working Document assessing EU equivalence decisions in financial services policy.[6] The Document provides a factual overview of third-country provisions in EU financial services legislation, also setting out the objectives and benefits of equivalence; alternative regulatory approaches; and how EU equivalence works and is determined.

Since the UK's referendum on EU membership in June 2016, the European Parliament has published several documents on equivalence, including:

- understanding equivalence and the single passport in financial services, third-country access to the single market;
- the UK's potential withdrawal from the EU and Single Market Access under EU financial services legislation; and
- potential concepts for the future EU-UK relationship in financial services.[7]

On Tuesday 28 February, Commissioner for the Euro and Social Dialogue, Valdis Dombrovskis, told MEPs on the EP's ECON Committee that should UK-based financial firms lose passporting rights following Brexit, the UK could apply for equivalence status. [8]

Opening remarks

Olivier Guersent, Director-General at DG FISMA, began his remarks by noting that third-country regimes had always been an important part of EU financial services legislation, especially given that financial markets were global. The 2008 financial crisis had been the catalyst for looking again at third-country provisions in EU legislation, and since then the Commission had worked to develop appropriate rules for any affected legislation.

[5] A report by the Economic Governance Support Unit of the European Parliament goes into more detail. See http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/587369/IPOL_BRI(2016)587369_EN.pdf

[6] See https://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteId=10102&documentType=STAFF_WORKING_PAPER&version=ALL

[7] All three reports can be accessed through the above link

[8] See EP press release at http://www.europarl.europa.eu/news/en/news-room/20170228IPR64259/uk-could-apply-for-%E2%80%9Cequivalence%E2%80%9D-for-its-firms-says-commissioner-dombrovskis

Guersent emphasised that third-country provisions were a useful tool to help ensure that international standards were effectively applied outside the EU. With equivalence decisions, he stressed that the objectives pursued were mainly prudential. The goal was to avoid importing undue risk, but where the EU accepted importing some risk, it was important to have confidence about how it would be managed by third-country jurisdictions. Equivalence was based on an assessment of the relevant regulatory and supervisory systems in non-EU countries. It sought to ascertain whether the rules in a third-country achieved the same regulatory or supervisory outcomes as EU rules. Granting equivalence meant relying on the rules and supervision of a foreign jurisdiction in a specific field. In general, the EU's third-country equivalence regimes all had different features. The main reason for this, and why there was no one instrument covering third-country equivalence, was that it was dealt with on a case-by-case basis, in line with the specific regulatory objectives of each piece of legislation. Guersent said that the Commission Staff Working Document showed that this level of flexibility had helped the EU's equivalence regime to prove its worth. The Staff Working Document had essentially been a "stock taking exercise", and it had highlighted that continuous work would be necessary to improve the current equivalence framework, with the role of the ESAs to be made clearer. It did not present any new proposals but clarified what the Commission was able and not able to do.

Andre Enria, Chairperson of the European Banking Authority (EBA), said that although it was the Commission that carried out assessments of equivalence, the EBA often contributed to those assessments. In banking, assessment on third-country equivalence was limited to three key areas: lower risk rates; confidentiality; and consolidated supervision. The third countries assessed by the EBA had no say in the assessment or outcome; the assessment was a unilateral and discretionary piece of work carried out by the EU, as was granting, amending or withdrawing equivalence. Given the benefits of obtaining EU passporting rights, a number of third countries had established a presence in one or more EU Member States to be able to provide their services across the Union. Enria noted that the financial crisis had impaired trust amongst supervisors, and that there had been a proliferation of ring-fencing measures. Such ring-fencing had damaged the concept of equivalence as a tool for streamlining various processes, and Enria saw the need for restoring trust amongst authorities. Finally, he noted that an effective equivalence regime was not a one-off assessment but required continuous monitoring. Therefore, it was inevitably a resource-intensive exercise.

Gabriel Bernardino, Chairman of the European Insurance and Occupational Pensions Authority (EIOPA), noted that in insurance, it was impossible to talk about a single equivalence assessment. He agreed with Enria that equivalence assessments were resource-intensive, but acknowledged that the work performed was highly useful.

Steven Maijoor, Chair of the European Securities and Markets Authority (ESMA), said that the issue of equivalence was an important one because although markets were global, regulation and supervision were carried out at national or regional level. It was therefore right to take stock of the EU equivalence framework and how it was performing. Maijoor welcomed the Staff Working Document and mentioned one of its key points; namely that the EU did not have one equivalence system but multiple equivalence systems. However, a common thread in all of the systems was that after the assessment, the EU relied on the home country regulation and supervision.

Turning to the role of ESMA, Maijoor noted that the Authority had been heavily involved in equivalence assessments, and echoed other speakers by emphasising that it was a time and resource-intensive process. In Maijoor's view, the current system had some benefits, but now was an opportune time to take stock and to see how the system could be improved. Listing just a few possible improvements, Maijoor firstly highlighted the amount of variation; perhaps not always warranted. Secondly, equivalence assessments so far had mainly been one-off, but continuous monitoring would be beneficial. Finally, he suggested that for those third-country entities that had to register in the EU, they should pay a fee. This could start to address the resource issues mentioned. In closing, Maijoor pointed to two more fundamental issues. The first was that the EU had a system of granting equivalence, whilst many third-country jurisdictions did not. This created an uneven playing field. Secondly, related to proportionality and the size and relevance of third-country financial markets, Maijoor asked to what extent the EU had sufficient assurance that third-country regulators would address the risks of their market participants in the EU. The reality was that EU regulators had limited opportunities to collect information to assess risks and limited supervisory and enforcement tools.

Debate

Burkhard Balz (EPP, Germany) noted that none of the interlocutors had spoken about Brexit and what Brexit would mean for equivalence. The majority of derivatives transactions were cleared by Central Counterparties (CCPs) operating in the UK, and Balz had serious concerns about the future of these transactions after Brexit. In his view, there was a need to amend current legislation in order to ensure that supervision of euro derivatives transactions would fall under the responsibility of the EU institutions. He asked if an equivalence system with the UK, mooted as an alternative by some, would provide sufficient guarantees. Secondly, he highlighted the fact that, under the current framework, the Commission could withdraw equivalence at any time, a situation seen as unsatisfactory by many. Balz asked how this system could be improved.

Like Balz, **Pervenche Berès** (S&D, France) asked about Brexit. In her view, the concept of proportionality was a general term, like that of subsidiarity, and Berès asked to what extent it would need to be re-interpreted in light of Brexit. She also noted that equivalence would come up in some files currently under discussion, and asked whether a horizontal approach was needed to address equivalence issues, especially with Brexit on the horizon. Finally, Berès asked about the procedure for withdrawing equivalence, something that had never been done before.

Kay Swinburne (ECR, UK), elected as ECON Vice-Chair earlier that day, asked about the CCP equivalence decision between the EU and the US.[9] In particular, she said that competitive issues had had a bearing on the final equivalence decisions, and Swinburne asked if competitive pressures from market infrastructure should play any part in equivalence decisions. **Lieve Wierinck** (ALDE, Belgium) asked a related question about the supervision of CCPs.

Sven Giegold (Greens/EFA, Germany) asked about the financial, time and staffing resources required to ensure the correct level of supervision and regulation, both with third-country partners and within the EU itself. He also asked how EU equivalence decisions could be properly monitored. **Gabriel Mato** (EPP, Spain) asked about equivalence in terms of global

[9] In March 2016, the Commission granted the US the equivalent regulatory regime for Central Counterparties as the EU. See Commission press release at http://europa.eu/rapid/press-release_IP-16-807_en.htm

standards. He noted concerns from some that the process for obtaining EU equivalence was too Eurocentric, and wondered whether it was possible to promote the adoption of global standards as a possible to equivalence.

Neena Gill (S&D, UK) said that the Commission's Staff Working Document was timely, given the number of inconsistencies in how equivalence was being implemented. In her view, any reform had to be fair and workable, and she cautioned against "super-equivalence" requirements. Gill also asked how the EU could ensure the correct balance, and not become "fortress Europe". Finally, she noted that equivalence was a political decision, and asked how the Commission would ensure that it would not become a political football.

Closing remarks

In response to comments made, Guersent acknowledged that Brexit would throw up many issues. That said, he said he would re-position the question towards the general philosophy outlined in the Commission Staff Working Document. The fundamental question was really: what was the amount of financial risk that someone other than the EU should be allowed to manage. As the financial system was a global one, it was impossible not to have others managing part of the risk, but the key point was the level and the limit. The bigger the risk, the more guarantees were needed. Turning to Swinburne's comments, Guersent noted that this had been a key issue in the discussions with the US, and indeed a key issue for both sides.

Responding to Berès, Guersent said that the Staff Working Document showed how the Commission applied proportionality in a consistent and non-discriminatory way; it was not used as a "catch all". Withdrawing equivalence would be done through an Implementing Act of the Commission.

Maijoor responded to the questions on CCPs, and how the supervision of EU CCPs differed from third-country CCPs. He noted that, under the existing equivalence mechanism, there was the possibility to take into account the size and relevance of a third-country market. Maijoor added that ESMA had a number of powers to ask for information on specific additional elements that were different in EU regulation to third-country regulation.

In reply to Giegold, Guersent said that the focus in DG FISMA was shifting from legislation to implementation. Maijoor added that markets were global but rules, regulation and supervision were done at national or regional level; that created coordination issues and an "inevitable" demand for resources. Answering Mato's point, Guersent said that global standards was not an alternative to equivalence but a basis.

In reply to Gill, Guersent emphasised that equivalence did not mean having the same rules but was rather a "sliding scale" that depended on the level of interconnectedness with and the potential to import risk from the different jurisdictions. The more interconnectedness there was, the more risk there was, and therefore the Commission had to be more confident that third-country rules would give the same outcome as EU rules. Guersent felt that the rules and practises in the UK were likely to be the same after Brexit as before. Whether that would provide the necessary confidence for the degree of interconnectedness was something that would have to be judged in due course.

Other News

Foreign Affairs Ministers agree Conclusions on security and defence

On Monday 6 March, Ministers meeting in the Foreign Affairs Council agreed Conclusions setting out the progress achieved in implementing the EU global strategy in the area of security and defence.[10] Conclusions covered improving CSDP crisis management structures; Permanent Structured Cooperation (PESCO); a coordinated Annual Review on Defence (CARD); developing Civilian Capabilities; and implementation in various other areas. Under the heading of improving CSDP crisis management structures, Ministers agreed to establish a Military Planning and Conduct Capability (MPCC). The MPCC will be responsible for the operational planning and conduct of non-executive military missions. Permanent Structured Cooperation would be open to all Member States, and Ministers agreed to continue work on its goals and governance model, in preparation of a Council Decision establishing PESCO.

Council amends EU MFF for 2014-2020

On Tuesday 7 March, Ministers meeting in the General Affairs Council agreed to adjust the EU's Multi-annual Financial Framework (MFF) for 2014-2020, to reinforce the priorities of tackling the migration crisis, strengthening security, boosting growth and creating jobs.[11] In addition, Ministers agreed to improve the EU's capacity to better respond to unexpected events by increasing the funds for the emergency aid reserve and the flexibility instrument. Finally, Ministers agreed to increase the scope for recycling unused payments from one year to subsequent years.

UK facing punishment from EU's Anti-Fraud Office

On Wednesday 8 March, it was announced that the EU's Anti-Fraud Office (OLAF) was looking to take UK authorities to task over claims that they failed to take action against a widespread fraud network that allowed cheap Chinese goods to flood the European market. At a time when the EU institutions are considering whether or not to grant China Market Economy Status (MES), OLAF believes that British customs officials repeatedly ignored warnings to take action over the influx of cheap Chinese textiles and footwear; "continuous negligence" that it values at close to €2 billion in lost revenues for the EU. In an effort to recoup some of the duties and VAT, OLAF has sent an official recommendation to the Commission's Directorate-General for Budget that the UK Government should be obliged to pay the €2 billion directly into the Union's budget. Any recovery of the funds will depend on forthcoming negotiations between the British Government and Commission officials.

Tusk says that EU27 will respond to Article 50 invocation "within 48 hours"

On Wednesday 8 March, ahead of the 9-10 March meeting of EU Heads of State or Government in Brussels, European Council President Donald Tusk said that EU leaders would respond "within 48 hours" to British Prime Minister Theresa May's formal invocation of Article 50. Tusk said that this was sufficient time for Council to react with draft negotiation guidelines for the 27 Member States to consider before leaders met again "probably in April" to finalise these. Tusk acknowledged that negotiating the political and technical hurdles of Brexit would be a "daily challenge" yet he was clear that the EU27 were "well prepared" and that their reaction to the UK's formal notification would be "fast and responsible".

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[10] See Council press release at http://www.consilium.europa.eu/en/press/press-releases/2017/03/06-defence-security/ and Council Conclusions at http://www.consilium.europa.eu/en/press/press-releases/2017/03/06-conclusions-security-defence/

[11] See Council press release at http://www.consilium.europa.eu/en/press/press-releases/2017/03/07-eu-budget-mmf-2014-2020-greater-focus-new-priorities/

Civil Liberties MEPs give approval to Ukraine visa-free travel

On Thursday 9 March, MEPs on the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee gave their support to an informal deal already agreed between EP and Council negotiators to grant citizens of Ukraine the right to visa-free travel throughout the EU. The move was backed by 39 votes to four, with one abstention, and will be now be put to a vote of the whole House at this month's plenary session in Strasbourg (13-16 March). If successful in plenary, the motion will then require formal adoption by Council before being signed into law. The visa exemption will enter into force 20 days after its publication in the Official Journal and will pave the way for citizens of Ukraine in possession of a biometric passport to travel freely within the EU for up to 90 days in any 180-day period. Ireland and the UK will be exempt from the new protocol.

Juncker outlines his vision for Europe as EU leaders gather in Brussels

On Thursday 9 March, EU-focussed publication *Politico* published a guest column, written by Commission President Jean-Claude Juncker, in which he argued that EU Member States ought to say "no" to nationalism and instead redouble efforts to build a stronger Union based on shared interests and collective industry.[12] Juncker's piece was published as EU leaders arrived in Brussels for a European Council meeting and called on them to have "an honest and open" discussion on how much the EU "could and should do" to support European industry. Juncker also outlined his belief that there was no scenario whatsoever in which economic nationalism could be "consistent" with the idea of Europe. For him, it was essential to "believe" in a Europe with a common, robust industrial policy that would ensure European success "even in these challenging times". For Juncker, supporting such a policy was a key part of the Europe he was fighting for.

[12] The full Juncker column with Politico can be found here - http://www.politico.eu/article/juncker-jobs-summit-eu-steel-no-to-nationalism-yes-to-industry/

Calendar

Maltese Presidency: forthcoming European Council meetings (January-June 2017)

22-23 June:	**European Council**

Maltese Presidency: forthcoming inter-parliamentary meetings in Valletta and Brussels (January-June 2017)

23-24 March:	Chairpersons' Meeting of the Committees on Social Affairs
6-7 April:	Chairpersons' Meeting of the Economic and Environmental Affairs Committee
26-28 April:	Inter-parliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP)
28-30 May:	COSAC Plenary Meeting

Forthcoming inter-parliamentary Committee meetings (ICMs) in the European Parliament

2 May:	ICM: "The implementation of Treaty provisions concerning national Parliaments" (organised by the EP's Constitutional Affairs Committee)
(tbc):	ICM: "State of play of the CFSP/CSDP" (organised by the EP's Foreign Affairs Committee)

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