



Interpreting the special Brexit Summit – A comment

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In view of British PM Theresa May's announcement on March 20, 2017 that Britain will trigger the two-year process of leaving the European Union (EU) on March 29, the European Council President Donald Tusk called for the EU 27 (without the UK) meeting on 29th April, 2017 to adopt the guidelines for the Brexit talks. He highlighted that the main priority for the negotiations was to create as much 'certainty' and 'clarity' as possible for all citizens, companies and member states that will be negatively affected by Brexit, as well as for the EU's important partners and friends around the world. Lauding the spirit of unity of the EU 27 on the substance and the method of conducting Brexit talks, Tusk noted that the talks would be carried out in a phased approach.¹

The meeting which happened between European Commission President Jean Claude Juncker and British PM Theresa May on 26 April also serves as a background for observation of the events related to the recent Brexit Summit. As reported by the media, the dinner meeting between the two leaders did not go off very well. The German newspaper '*Frankfurter Allgemeine Sonntagszeitung*', one of the first to report on the meeting revealed that Juncker had said that he was sceptical about the outcomes of the talks. In what seemed to be a telephone call to German Chancellor Angela Merkel later, he told her his assessment that May was living in a different galaxy and was making illusions. In her response, Merkel warned that "some in the UK" still "make illusions".² The discussions which transpired from the meeting indicated a possible lack of understanding of the priorities of each party. While Theresa May stated UK's willingness to embark on a trade deal, Juncker, as will be clear later, had emphasised on the payment of 60 billion Euros divorce bill and citizens rights, without which there would be no agreement. May later dismissed these reports as 'Brussels gossip'.³

The fact that the European leaders adopted a hard stance on Brexit in the special Brexit Summit, affirming that they would not discuss a future trade deal with Britain until "sufficient progress" is made on Britain agreeing to pay the divorce bill, the rights of the EU nationals in UK and the border in Ireland doesn't come as a surprise announcement. On several occasions in the

past, the EU leaders had reiterated that Britain must prepare for a hard Brexit. It is stated that Britain is expected to pay a 60 billion Euro divorce bill. The money is intended to pay for everything from pensions to financial commitments already made in the EU's 7-year budget, which runs till 2020. The President of the European Commission, Jean Claude Juncker stated that the foremost priority for the EU was to safeguard the status and protect the rights of the EU citizens in Britain. Meanwhile, Donald Tusk, President of the European Council also recalled that the European Commission had prepared a full list of rights and benefits that it wants to guarantee for those affected by Brexit. To achieve sufficient progress on it, as he stated, the EU needs 'a serious British response'. Another focus of attention of the Summit was the emphasis paid on the possibility of Ireland joining the EU, in the event of a vote for Irish unification. It must be noted here that the Irish government had been demanding the likes of a 'GDR clause' which had allowed East Germany to enter the European Community after the fall of the Berlin Wall. The GDR clause is seen as mirroring the Good Friday Agreement of 1998 which currently allows for a ballot on reunification if a majority agrees. However, a recent poll by Ipsos Mori revealed that 62 % would vote for Northern Ireland to remain in the UK, while only 22 % supported a united Ireland.⁴ The EU leadership as well as the Irish government have jointly emphasised on avoiding a hard border for Ireland and leaving the legal option of Northern Ireland joining the EU in the case of a united Ireland. Though Taoiseach Enda Kenny welcomed the agreement on reunification of Ireland, he also said at the same time that the possibility of such an event is unlikely in the immediate future.⁵

Both the UK and the EU are clear on one aspect, which is, the conduct of the negotiations in a spirit of goodwill and to strive for creating a fair and constructive agreement in the best interests of both sides. The special summit demonstrated the unity of the 27 on a clear line, which as they made clear was not directed against Britain, but for the sake of everybody's interests.⁶

The European Council (EC) laid down certain *guidelines* which defined the framework for negotiations under Article 50 of the Treaty of the European Union. These guidelines sets out the overall positions and principles that the Union seeks to pursue throughout the process of negotiation.

The first of the guidelines stated as the 'Core Principles' recapitulated the desire of the EC to have the UK as a close partner in the future. However, it also said that any agreement with the UK will have to be a balance of rights and obligations. The Council also highlighted that a non-member of the Union wouldn't be entitled to privileges and benefits of the Single Market. While stating so, the EC also communicated that it stands ready to initiate work towards an agreement on trade, as agreed by the UK which is to be finalised and concluded once the UK is no longer a Member State. It clearly stated as well that there will be no separate negotiations between individual Member States and the UK.⁷

'A phased approach to negotiations' is intended for the purpose of the UK's orderly withdrawal and to reduce uncertainty and disruption caused by the decision of the UK to leave the Union. The leaders also agreed to ensure reciprocal guarantees to safeguard the status and rights of EU citizens, EU businesses trading with and operating in the UK and UK businesses

trading with and operating in the Union. The EC stated that these negotiations need to be effective, enforceable, non-discriminatory and comprehensive.

On Ireland and the Sovereign Base Areas of the United Kingdom in Cyprus, the EC suggested that the Union would have to recognise existing bilateral agreements and arrangements between the UK and Ireland/Cyprus, as compatible with EU law. The leaders also agreed on carving out flexible and imaginative solutions for Ireland.

The guidelines also stressed on the adoption of a possible common approach towards third country partners, international organisations and conventions concerned.⁸

The essence of the negotiations remains the establishment of strong and constructive ties beneficial to the interests of both sides. It has been quite clear that the above guidelines have put to a standstill British aspirations of having future trade relations being discussed simultaneously through the talks. At the same time, however the roads to cooperation between the EU and Britain have not been closed altogether as emphasis on the necessity of establishing partnerships in areas of security, defence and foreign policy as well as in the fight against terrorism and international crime were laid down.

The Brexit negotiations are to open shortly after Britain holds an early election on June 8. The uncertainty surrounding the entire Brexit conundrum has been tough not only on the political leadership of the UK, but also on the people whose livelihood has been created, defined and is dependent on the broad legal agreements, which were made in solidarity under the Treaties of the European Union over the years. What needs to be made clear at this stage, especially when the actual negotiations open after the elections, is to find out a way of convergence of interests of both the UK and the EU 27. This, as it would be agreed by many, can bring mutual benefits to both the parties, while addressing their specific concerns. While speaking on the potential need for finding an amicable way for settling the 'core issues' between the two parties, it must also be remembered that it is easier said than done. For instance, agreeing on the protection and the safeguarding of the rights of British expats residing in other EU countries, or EU nationals residing and working in Britain would require sufficient agreeable *guarantees* from the government of the UK as well as from the EU leadership. The assurances, if and when agreed, should be mutual so as to secure the rights of approximately 1.3 million Britons who live in various European countries and 2.1 million EU nationals who were employed in the first quarter of 2016.⁹ The likely scenario is individual 'acquired rights' under the 1969 Vienna Convention which says that the termination of a treaty "does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination."¹⁰ The protection of the rights of citizens on both the sides should be aimed at safeguarding the citizens' rights, including access to healthcare, the continual right to work, reside and own property in other EU countries. In other words, establishment of political and socio-economic certainties for the citizens likely to be affected by Brexit should unarguably be the foremost priority in the negotiations.

The future relations between Britain and Ireland would have to be determined taking into consideration the economic, territorial and movement concerns and citizens' rights to live and

work in each other's countries. An orderly withdrawal, as cited in the guidelines of the negotiations would have to be accommodating enough with the aim of avoiding a hard border and ensuring the best possible socio-economic security under the integrity of the Union legal order.

Theresa May's call for the General Election three years before time has been a deliberate and calculated move on the eve of the negotiations. The House of Commons voted by more than the required two-thirds majority to hold the election. If May is successful in garnering support and consolidating her leadership, she might have flexibility during the conduct of the negotiations, scheduled to start soon after the elections.

The adoption of a phased approach towards the conduct of the negotiations taking cognizance of the responsibilities of the UK has been a systematic advance towards the negotiations. But what remains to be seen is whether the selected timeframe will be sufficient to make a successful conclusion of one of the most complex negotiations that has not happened in the history of the EU so far. In times of instability, all that leadership of both the sides should agree is on establishing composure and certainty through concrete measures. To that extent, the negotiations should strive for building sufficient convictions for the citizens of the EU and the UK.

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Endnotes

¹ Remarks by President Tusk on the Special European Council (Art. 50) of 29 April 2017, *European Council*, April 29, 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29-tusk-remarks-special-european-council-art50/> accessed May 3, 2017.

² Gutschker, Thomas, "EU Commission fears failure of negotiations", *Frankfurter Allgemeine Sonntagszeitung*, April 30, 2017, <http://www.faz.net/aktuell/brexit/eu-kommission-skeptisch-vor-brexit-verhandlungen-14993673.html> accessed May 3, 2017.

³ Roberts, Dan, Rajeev Syal and Daniel Boffey, "May dismisses reports of frosty dinner with EU chief as Brussels gossip", *The Guardian*, May 1, 2017, <https://www.theguardian.com/politics/2017/may/01/jean-claude-juncker-to-theresa-may-on-brexit-im-10-times-more-sceptical-than-i-was-before> accessed May 3, 2017.

⁴ Rankin, Jennifer, "Europe could allow a united Ireland to join EU after Brexit", *The Guardian*, April 28, 2017, <https://www.theguardian.com/uk-news/2017/apr/27/eu-to-debate-recognising-united-ireland-to-allow-swift-return-for-north> accessed May 22, 2017.

⁵ Leahy, Pat, "Enda Kenny welcomes EU's united Ireland agreement", *The Irish Times*, April 29, 2017, <http://www.irishtimes.com/news/world/europe/enda-kenny-welcomes-eu-s-united-ireland-agreement-1.3066687> accessed May 3, 2017.

⁶ Boffey, Daniel, "EU threatens Theresa May on trade talks and its citizens' rights", *The Guardian*, April 29, 2017, <https://www.theguardian.com/politics/2017/apr/29/brexit-rights-of-eu-nationals-eu27> accessed May 3, 2017.

⁷ "European Council (Article 50) guidelines for Brexit negotiations", *European Council*, April 29, 2017, http://www.consilium.europa.eu/press-releases-pdf/2017/4/47244658130_en.pdf accessed May 3, 2017.

⁸ Ibid.

⁹ Bennet, Asa, "What will Brexit mean for British expats?", *The Telegraph*, March 30, 2017, <http://www.telegraph.co.uk/news/o/eu-facts-what-would-leaving-the-eu-mean-for-expats/> accessed May 11, 2017.

¹⁰ Ibid.