

February 2016

## Outlook for the European Council of 18-19 February 2016

At the 18-19 February 2016 meeting of the European Council, EU Heads of State or Government will [focus on two main issues](#): the renegotiation of the United Kingdom's membership of the EU and the migration crisis. With the [aim of reaching an agreement at this European Council meeting](#), Heads of States or Government will discuss the proposal for a new settlement between the UK and the EU, put forward by European Council President Donald Tusk on 2 February 2016. Regarding the migration crisis, the European Council will take stock of the implementation of its previous decisions. The EU leaders are also due to endorse recommendations for the euro area.

### 1. The United Kingdom's membership of the EU

The ['New settlement for the United Kingdom within the European Union'](#) will be the main topic of the upcoming [18-19 February European Council meeting](#). European Council President Donald Tusk [made it clear](#) that the objective is to reach an agreement between all 28 Member States. On 2 February 2016, he [issued a draft proposal](#) in response to the [letter](#) on this topic addressed to him by UK Prime Minister David Cameron in November 2015. On 5, 8 and 11 February 2016, [meetings were held](#) at Sherpa/Permanent Representative level, including representatives of the European Parliament, to discuss the [basis of the draft agreement](#) proposed by President Tusk, which has four 'baskets' of reforms, in the fields of economic governance, competitiveness, sovereignty and social security/free movement. The proposal comprises six draft legal texts:

- [Draft decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union](#);
- [Draft statement on section A of the decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union](#);
- [Draft European Council declaration on competitiveness](#);
- [Draft declaration of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism](#);
- [Draft declaration of the European Commission on the Safeguard Mechanism referred to in paragraph 2\(b\) of Section D of the decision](#); and
- [Draft declaration of the European Commission on issues related to the abuse of the right of free movement of persons](#).

### Proposed changes in four areas

#### 1. Economic governance

The proposed reforms in this field (Section A of the Draft decision) seek to ensure equal rights in the Economic and Monetary Union for Member States not in the euro area. The draft proposal outlines a set of principles, including i) non-discrimination between natural or legal persons based on the currency of the Member State; ii) a limitation such that the ECB, the Single Resolution Board and Union bodies exercising similar functions will only have authority over banks located in Member States participating in [Banking Union](#); and ii) that any emergency measures, such as a [financial assistance programme](#) to ensure the financial stability of the euro area, will not have an impact on the budgetary policies of Member States outside the euro area.

A draft Council decision sets out the mechanism for the enforcement of these principles. The proposed mechanism is as follows: If a (yet to be specified) number of Member States outside the euro area believes that these principles are infringed by new proposed legislation, they can request further discussion of the issue at Council level. However, one caveat is that this process must take place 'without prejudice to the normal operation of the Union's legislative procedure'. This suggests there would be no veto right and that the decision-making process could continue unimpeded, notwithstanding possible referral to the European Council.

### *2. Competitiveness*

Section B of the draft decision focuses on a European Council declaration on working towards greater integration of the internal market. It refers to the services, digital and energy sectors, as well as to increasing the number of trade agreements. The European Council asks the Commission also to propose the repeal of measures that are inconsistent with the principle of subsidiarity, or would involve a disproportionate regulatory burden.

### *3. Sovereignty*

Section C clarifies the concept of 'ever closer union', specifying that it is not 'equivalent to the objective of political integration' and does not 'require further competences to be conferred upon the EU'. This section repeats the language of the [June 2014 European Council conclusions](#), stating that 'the concept of ever closer union allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further'. On 10 February 2016, the EU's six founding members (Germany, France, Italy, Belgium, the Netherlands and Luxembourg) in a [Joint Communiqué](#) adopted at a meeting in Rome, pledged to pursue 'ever closer union'.

Section C also includes a 'red card' proposal, which would allow a threshold of 55 per cent of national parliaments (calculated in accordance with [Article 7\(1\) of Protocol No 2](#)) to raise an objection to a legislative proposal within 12 weeks of its submission. If the concerns of national parliaments are not met, the Council could then decide to discontinue its discussion of the proposal.

### *4. Social benefits and free movement*

The key features of the draft agreement on [issues related to the abuse of the right of free movement of persons](#) are amendments to three main EU laws currently in force in this area: the [Citizens' Directive](#), the [Regulation](#) on the free movement of workers, and the [Regulation](#) on social security. The proposal acknowledges that different types of social security systems, such as the UK's system of in-work benefits, 'may lead members of the workforce to be attracted to certain territories without this being a natural consequence of a well-functioning market'. The draft proposal allows for a four-year restriction on access to in-work benefits through the introduction of an 'emergency brake' in the Regulation on free movement. If and when the draft decision enters into force – as soon as the UK states that it will remain an EU Member State – the Commission will propose amendments to existing legislation. The proposal calls for Member States to support this decision in the Council; however, all three proposals would be subject to the ordinary legislative procedure and thus also have to be agreed with the European Parliament.

### **National and EU positions**

The most controversial issue for discussion is likely to be the introduction of an 'emergency brake' relating to in-work benefits for EU migrant workers. Some countries might [see](#) limiting benefits to EU workers as discriminatory. The other main issue to be discussed will be relations between the euro area and non-euro countries. The Visegrad countries (Czech Republic, Hungary, Poland and Slovakia) will hold a meeting on [15 February 2016](#) to coordinate their positions on the drafts, particularly relating to the proposed curbing of benefits for workers from other Member States. [Italy](#) has expressed its optimism about a deal being reached, while [Germany](#) has admitted that an EU without the UK would be 'poorer, weaker [and] less open to the world'. Recently, President Tusk announced that he has cancelled all his appointments prior to the

18-19 February European Council, in order to 'secure broad support' for his proposals for a deal. He [has planned meetings](#) with German, French, Greek, Czech, Romanian and Belgian leaders, as well as MEPs.

At the European Parliament's plenary session on 3 February 2016, European Commission President Jean-Claude Juncker [welcomed President Tusk's proposals](#), stating that 'the settlement that has been proposed is fair for the UK and fair for the other 27 Member States, and also fair for the European Parliament.' He did, however, also note that already, 'the UK benefits from more protocols and opt-outs than any other Member State.'

The British question dominated the [plenary debate on the preparation of the European Council meeting of 18 and 19 February 2016](#). Both Bert Koenders, representing the Council Presidency, and Commission President Juncker [observed](#) that a large majority of MEPs in the European Parliament expressed their wish that the United Kingdom remain a member of the European Union. UK Prime Minister David Cameron has [accepted](#) an invitation from Parliament's President, Martin Schulz, to address the Conference of Presidents on 16 February 2015. When meeting with David Cameron in Brussels on 29 January 2016, President Schulz [stressed](#) that, as co-legislator, Parliament will have a key role to play in the success of any initiatives for EU reforms resulting from negotiations. [Recently](#) he also emphasised that 'we need the UK to make the EU stronger and better' and outlined the Parliament's readiness 'to act as an honest partner in the renegotiation process.'

#### Overview of the proposals in relation to the United Kingdom

Policy proposal	Policy basket	(Legal) instrument	EU institution (proposal)	Time-frame for implementation
Safeguard mechanism for non-euro area countries	Economic governance	statement	European Council (Council)	Short term
Principles defining the relationship between euro area 'ins' and 'outs'	Economic governance	(decision)		Upon next revision of Treaties
Strengthening the internal market	Competitiveness	decision	European Council	Medium-term, through legislation
Repealing unnecessary legislation	Competitiveness	declaration	European Commission	Medium-term, through legislation
Language on the meaning of 'ever closer union'	Sovereignty		European Council	Upon next revision of Treaties
'Red Card' for national parliaments	Sovereignty	decision	European Council	Short term
Changes to child benefit rules	Social security/free movement	declaration	European Commission	Medium-term, through legislation
'Emergency brake' on access to welfare	Social security/free movement	declaration	European Commission	Medium-term, through legislation

## 2. Migration crisis

[The European Council conclusions of 17-18 December 2015](#) in this field stressed that previous commitments had been insufficiently implemented and that 'it is indispensable to regain control over the external borders'. At that point already, EU leaders [called on](#) the EU institutions and Member States to 'address the shortcomings at the Schengen external borders', 'address deficiencies in the functioning of hotspots', 'implement relocation decisions', 'take concrete measures to ensure the actual return and readmission', and 'ensure implementation and operational follow up' to the numerous agreements with third countries.

The 18-19 February 2016 European Council will follow up on these decisions and take stock of their implementation. The most recent [overview from the European Commission on the state of play of the measures to address the refugee crisis](#) indicates continued shortcomings in numerous areas. [Prime Minister Mark Rutte of the Netherlands \(which currently holds the Presidency of the Council\)](#) and [European Council President Donald Tusk](#) both indicated that the EU has until March to sharply reduce the number of refugees, in order to preserve the Schengen area. The French Government's think-tank, *France Stratégie*,

conducted an [analysis](#) showing that the end of the Schengen area (namely the permanent reintroduction of border controls) could cost participating countries more than 100 billion euro by 2025.

The [most recent data from the International Organization for Migration \(IOM\)](#) shows that, rather than decreasing, migration flows to the EU have been significantly higher in January/February 2016 compared to the same period in 2015. This number might increase even further, as due to [recent Russian and Syrian government activities in Syria](#), a further 30 000 refugees are expected to cross the border into Turkey, and many of them will try to continue on to the EU. In view of the upcoming European Council, on 10 February 2016 the Commission [adopted](#) a [Communication](#), a series of reports on the [implementation of priority actions](#) in Greece, Italy and the Western Balkans, and a report on the [implementation of the EU-Turkey Joint Action Plan](#). The College also adopted a series of [infringement decisions](#) and discussed the management of the Schengen borders. Based on the report on the EU-Turkey Joint Action Plan, the European Council is expected to acknowledge the important steps taken by Turkey in the implementation of the action plan while also outlining that the flow of migrants arriving in Greece via Turkey remains far too high. Ahead of the European Council, Turkish Prime Minister Ahmet Davutoğlu will meet with a group of EU leaders (those he also met with [prior to the 16 December 2015 European Council](#)), to discuss wider issues on migration. The European Council is expected to welcome the [agreement](#) reached in the Council on 3 February 2016, as part of the follow-up activities to [the meeting of Heads of State or Government with Turkey on 29 November 2015](#), on how to finance the 3 billion euro EU refugee facility for Turkey.

European Commission President Jean-Claude Juncker [again highlighted](#) the lack of follow-up by EU Member States to the financial commitments they have made during the migration crisis. The EU [pledged to triple its financial support to Syria](#) to more than 3 billion euro at a [conference on the Syria crisis](#) in London on 4 February 2016, co-hosted by the UK, Germany, Kuwait, Norway and the United Nations. EU leaders are expected to welcome this commitment and to urge the Member States and EU institutions to follow up on their pledges rapidly. In the Parliament's [plenary debate on the preparation of the European Council meeting of 18-19 February 2016](#) many political groups criticised the European Council's handling of the migration crisis. Some called upon the latter to reflect on its future role, identifying its historic failure in many areas, and called for greater leadership from it. The Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) presented its draft report [on the situation in the Mediterranean and the need for a holistic EU approach to migration](#) on 18 January 2016, outlining a comprehensive list of suggestions to tackle the various dimensions of this issue.

### 3. Other issues

EU leaders will endorse recommendations on economic policies for the euro area. As part of the [revamped European Semester](#), [draft recommendations](#) were initially proposed by the Commission in late November 2015, alongside the [2016 Annual Growth Survey](#) and the [Alert Mechanism Report](#). On 15 January 2016, the [Ecofin Council](#) approved the [recommendations](#) for the euro area after an exchange of views in the [Eurogroup](#).

Essentially, the euro area is recommended to pursue the implementation of growth-enhancing economic policies while maintaining sound public finances. Further reforms to labour, product and services markets should also be carried out. In the financial field, banks' non-performing loans should gradually be reduced and insolvency laws for businesses and households improved. Lastly, work should continue towards completion of Economic and Monetary Union, in line with the [Five Presidents' report](#). The Ecofin Council is expected to formally adopt the euro-area recommendations at its next meeting on 8 March 2016.

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