

# EUROPEAN DIGEST – INTERNATIONAL DIGEST

BY

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The first months of 2017 were marked by elections that were considered high risk in a number of Member States of the European Union due to the fear of seeing ‘populist’ parties strengthened at the end of national elections. The result of the general elections in the Netherlands was considered to be the first test of whether there had been any reversal of the rise of anti-European populist parties, followed by the election of Emmanuel Macron as president of the French Republic.

On the European Union level, Malta took over the rotating Presidency of the Council of the European Union from Slovakia. As far as the economic and monetary union are concerned, the EU continued its strategy of adopting measures without amending the treaties through the adoption of the Structural Reform Support Programme. This process was prolonged by the publication of several related documents by the European Commission and other Community bodies. The high point was the declaration of the 27 Member States on the occasion of the 60th anniversary of the Treaty of Rome, on 25 March 2017, preceded by the publication of a white paper on the future of the European Union by the European Commission. It was in the same context that the European Commission presented its blueprint for the European Pillar of Social Rights.

On the international level, Brexit and the attitude of the President of the United States of America, Donald Trump, continue to preoccupy the main international financial institutions, which have never stopped denouncing nationalist attitudes that are liable to obstruct free trade and its anticipated positive impact on the return to worldwide growth.

## 1. THE INSTITUTIONAL DEBATE

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### 1.1. THE RETREAT OF ‘POPULISM’ IN THE EU?

Following the resignation of the President of the European Parliament, Martin Schultz, of the Progressive Alliance of Socialists and Democrats (S&D), Germany, the Italian deputy, the former European Commissioner for Industry and Enterprise, Antonio Tajani, was elected President of the European Parliament on 17 January

2017. Since this election and the reappointment of Donald Tusk as President of the European Council in May 2017 (Poland), representatives linked to the European People's Party (PPE, a confederation bringing together right and centre-right political parties in the 27 Member States – all except the United Kingdom) have been at the head of all three of the main European institutions.

In the Netherlands, the results of the general election of 15 March 2017 reassured the European elites concerning the capacity of Dutch voters to resist the temptation of the 'populist vote', understood to mean an 'anti-European vote'. The VVD party (liberal right) of the prime minister, Mark Rutte, remains the number one political force in the country (21.3% of the votes, down from 2012). The PVV, Geert Wilders' racist and xenophobic party in favour of Nexit (Netherlands exit from the European Union), managed to only garner 13.1% of the vote. In the Dutch political system, 27 political parties were in the running, reducing the risk of the PVV's success because several political parties are needed to form a coalition government. On the other hand, the workers' party, the PvdA, recorded its worst ever result, or 5.7%, down from 24.8% in 2012.

In France, the electoral campaign for the presidential election in April-May 2017 was unprecedented on a number of counts. The fear that the *Front National* might advance to the second round of the presidential election must be interpreted in the context of the Fifth Republic, in which the presidential election is supposed to be a time for discussion of the choice between the programmes of the various candidates for the presidency of the Republic at the end of a two-round election. The decision, on 20 November 2016, of the outgoing president, socialist François Hollande, not to stand reinforced the growing Americanisation of French political life and led to the organisation of leadership elections within the two main French political parties, The Republicans and the Socialist Party. François Fillon, Sarkozy's former prime minister, knocked out the head of The Republicans, Nicolas Sarkozy and Alain Juppé in the right's primary.

In the left-wing primaries (22 and 29 January 2017) Benoit Hamon defeated the former socialist prime minister, Manuel Valls, advancing to the run-off, albeit with little support from his party. The emergence of the En Marche movement, created in April 2016 by Emmanuel Macron, the former Minister of Finance of François Hollande's centrist or liberal social and pro-European government, unblocked the 'left-right' divide in the fifth Republic. In February 2017, Jean Luc Mélenchon created the *La France Insoumise* party, to the left of the socialist party.

At the end of the first round of the presidential election (23 April 2017), characterised by a record high abstention rate (22.23%), the confrontation between Emmanuel Macron (24.01%) and Marine Le Pen (21.30%) was presented as the

choice between two ‘visions of France’. Jean-Luc Mélenchon’s party contributed to counteracting the shift towards the *Front National* by taking 19.58% of the vote (just behind François Fillon, who took 20.01% of the vote in a context marked since March 2017 by a series of scandals and fake jobs dubbed ‘Pénélope Gate’), while the Socialist Party candidate only achieved 6.36%. At the end of the second round, voter turnout was its lowest ever with more than one in four voters abstaining. By voting ‘white’ or ‘void’, more than four million French opted not to choose between the two candidates. Supported by the main media and benefiting from the ‘anti-Le Pen vote’, Emmanuel Macron’s victory (66% of the vote) and his pro-European plan was welcomed with relief by the European institutions. The latter feel reassured in their pursuit of the various steps towards greater economic and monetary union, identified in the Five Presidents’ Report of June 2015.

## 1.2. THE DECLARATION OF ROME

On 25 March 2017, the leaders of the 27 European Union Member States gathered in Rome to sign the Rome Declaration, commemorating the 60th anniversary of the signature of the Treaty of Rome. This treaty expanded the cooperation between the six founding countries of the European Economic Community (EEC) in a geopolitical context marked by East-West conflict. The EEC had laid the foundations of the common market, which was transformed into the ‘internal market’ following the Single European Act of 1986, a choice ratified at the time by all 12 national parliaments of the EEC, including the British parliament. The choice to increase economic prosperity by creating a single market culminated in the adoption of a single currency, the steps for which were introduced by the Maastricht Treaty of 1992. The most recent treaty, i.e., the Lisbon Treaty, was the successor to the aborted draft treaty establishing a European Constitution, which was rejected by referenda held in France and the Netherlands on 29 May and 2 June 2005 respectively. The Lisbon Treaty, which introduced a provision concerning the secession of one of the EU Member States, has been in force since 1 December 2009. This treaty is also the one that paved the way for the future development of heightened cooperation in which at least a third of the Member States wish to deepen European integration without prejudice to the provisions relating to the internal market. The latter remains ‘*the cornerstone of Europe’s integration and sustainable growth*’, according to the mission letter from the then President of the European Commission, Emmanuel Barroso in the introduction to the Monti Report, which in 2010 presented ‘A new strategy for the single market’.

In the declaration signed in Rome on 25 March 2017, the European leaders affirmed that ‘*We will act together, at different paces and intensity where necessary, while moving in the same direction, as we have done in the past, in line with the Treaties and keeping the door open to those who want to join later. Our Union is undivided and indivisible.*’

They go on to affirm: *'We will make the European Union stronger and more resilient, through even greater unity and solidarity amongst us and the respect of common rules.'* The declaration confirms the possible recourse to the differentiation mechanisms introduced by the Lisbon Treaty, with the scope extended to defence (Permanent Structured Cooperation). Concerning social Europe, the Declaration envisages *'a Union which, based on sustainable growth, promotes economic and social progress as well as cohesion and convergence, while upholding the integrity of the internal market.'*

On 17 January 2017, the British prime minister, Theresa May, gave details of the plan for the exit of the United Kingdom from the EU, seven months after the referendum on 23 June 2016 in favour of Brexit. The roadmap constituted a prerequisite for the activation on 29 March 2017 of the procedure for the withdrawal of the United Kingdom from the EU, as enshrined in Article 50 of the Treaty on European Union (TEU). The 12-point plan presented on 17 January 2017 provides for a *'hard Brexit'*. In the words of Theresa May, *'Not partial membership of the European Union, associate membership of the European Union, or anything that leaves us half-in, half-out. We do not seek to adopt a model already enjoyed by other countries. We do not seek to hold on to bits of membership as we leave.'* To the general surprise and despite her promise not to hold early elections, on 18 April 2017 Theresa May announced her decision to call a general election on 8 June 2017, the objective being to consolidate her position in favour of a *'hard Brexit'* after the election.

#### References:

Declaration of the leaders of 27 member states and of the European Council, the European Parliament and the European Commission, Doc. 149/17:

<http://www.consilium.europa.eu/en/press/press-releases/2017/03/25/rome-declaration/#>.

Prime Minister Letter to the President of The European Council, 29 March 2017: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604079/Prime\\_Ministers\\_letter\\_to\\_European\\_Council\\_President\\_Donald\\_Tusk.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf).

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## 2. ECONOMIC AND SOCIAL GOVERNANCE

### 2.1. ECONOMIC GOVERNANCE: STRUCTURAL REFORM SUPPORT PROGRAMME

On 27 April 2017, the European Commission welcomed the European Parliament's vote to greenlight the Structural Reform Support Programme (SRSP), a new programme implemented by the Union to provide Member States with technical support. The programme has a budget of 142.8 million EUR and runs from 2017 until 2020. It will not require co-financing on the part of Member States. It will be administered by the Commission's Structural Reform Support Service (SRSS), which was

set up in July 2015 under the political supervision of Vice-President Dombrovskis. This service coordinates and provides the necessary technical expertise for the implementation of major structural reforms which, in a number of cases, feature in the country recommendations addressed to the Member States of the Union. The service is based on demand and only intervenes if requested to do so by a Member State.

Reference:

IP 17/1122 and European Parliament legislative resolution of 27 April 2017 on the proposal for a regulation of the European Parliament and of the Council on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013 (Ordinary legislative procedure: first reading):

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0139+0+DOC+XML+V0//EN>.

### **3. REVISION OF THE TREATIES/FUTURE OF THE EUROPEAN UNION**

#### **3.1. SIGNATURE AND RATIFICATION OF THE CETA TREATY**

On 15 February 2017, the European Parliament approved the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, thereby concluding the ratification process of this agreement at the EU level. In France, more than 150 deputies appealed to the Constitutional Court, requesting verification of the compatibility of the treaty with the French Constitution. The constitutionalist Dominique Rousseau and others submitted a memoir, or a ‘back door’ as it is also called in the jargon, namely a written contribution in support of the appeal. The decision of the Constitutional Court was expected on 22 March 2017 but the Court announced that the decision would be postponed, an unusual occurrence, until early summer 2017.

References:

European Commission welcomes Parliament’s support of trade deal with Canada, 15 February 2017, IP 17/270:

[http://europa.eu/rapid/press-release\\_IP-17-270\\_en.htm](http://europa.eu/rapid/press-release_IP-17-270_en.htm).

Decision No 2017-749-DC of 31 July 2017 - Comprehensive Economic and Trade Agreement between Canada, on the one hand, and the European Union and its Member States, on the other.

On 22 February 2017, the general secretariat of the Constitutional Council recorded the submission which, to be registered, had to be presented by at least 60 deputies:

<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-749-dc/version-en-anglais.149908.html>.

### **3.2. THE EUROPEAN COMMISSION'S VISION ON THE 'FUTURE OF EUROPE'**

On 1 March 2017, the European Commission presented its white paper on the future of Europe, which constituted its contribution to the Rome summit of 25 March 2017. The European Commission presented five scenarios for the next 10 years, each offering an insight into the Union's potential future by 2025. These scenarios were neither mutually exclusive nor exhaustive. Scenario 1 was 'to carry on'. The EU 27 would focus on delivering its reform agenda, in the spirit of the Communication from the Commission of 2014 'A new impetus for Europe' and the Bratislava Declaration, which was adopted in 2016 by all 27 Member States. Scenario 2 'Nothing but the Single Market' would mean the EU 27 would be gradually recentred on the single market. Scenario 3 would permit the development of a multi-speed European Union, the scenario of a differentiated EU. Scenario 4 'doing less but more effectively' is that of the results-based EU. The EU would concentrate its efforts on policy areas chosen for reasons of effectiveness and would reduce its interventions in sectors in which its action would be without any added value. Finally, Scenario 5, 'Doing much more together', is much more ambitious, because the Member States would decide to share more powers, resources and decision-making processes across all policy areas. Decisions taken at European level would be adopted within shorter time frames and implemented swiftly.

It is worth noting that France, Germany, Italy and Spain were in favour of Scenario 3 following a European mini-summit of the four most populous EU countries held in Versailles on 6 March 2017.

Reference:

Commission presents White Paper on the future of Europe: Avenues for unity for the EU at 27, IP 17/385 and COM(2017) 2025, 1 March 2017:

[http://europa.eu/rapid/press-release\\_IP-17-385\\_en.htm](http://europa.eu/rapid/press-release_IP-17-385_en.htm);

<https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-2025-F1-EN-MAIN-PART-1.PDF>.

## **4. EU SOCIAL LEGISLATION/PILLAR OF SOCIAL RIGHTS**

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### **4.1. EUROPEAN PILLAR OF SOCIAL RIGHTS**

At a high-level conference held on 23 January 2017 on the European Pillar of Social Rights, Jean-Claude Juncker, the President of the European Commission, attempted to defend the project that was supposed to restore the EU's social reputation. He argued in favour of a minimum salary and a minimum income for every unemployed person. If one refers to Article 153 of the Treaty on the Functioning of the European Union, however, the European Union does not have competence in the field of pay. At the plenary session of 19 January 2017, the European Parliament

adopted a resolution on the European Pillar of Social Rights, drafted by Maria João Rodrigues (S&D, Portugal). The recommendation was adopted by vote with 396 votes in favour, 180 against and 68 abstentions.

At the end of a conference on the European Pillar of Social Rights, held in Paris on 2 March 2017, a number of EU Ministers for social affairs, labour and employment signed a declaration affirming their support for the European Commission initiative. A Summit on employment and fair growth will be held in Sweden in November 2017.

On 26 April 2017, one year after the launch of the consultation on the European Pillar of Social Rights (March 2016), the European Commission presented its proposals in the form of 20 key principles and a recommendation, as well as a proposal for a joint proclamation of the Parliament, the Council and the Commission. Based on this text, the Commission intends to open discussions with the European Parliament and the Council with a view to obtaining broad political support and a strong commitment in favour of the pillar. According to the European Commission, the European Pillar of Social Rights defines *'20 policy domains, which are seen as essential for well-functioning and fair labour markets and welfare systems'*. The 20 principles enshrined in the pillar are based on three main principles: 1) equal opportunities and access to the labour market, 2) fair working conditions and 3) social protection and social inclusion. They emphasise how the promise of a highly competitive social market economy, as enshrined in the treaties, should be fulfilled, aiming to achieve full employment and social progress.

In the document concerning the social dimension, the Commission affirms that *'Education and health, employment patterns, wages, incomes and social protection systems still differ greatly'*. This also explains the rich diversity of the member countries making up the EU. The word 'still' could be cause for concern. In its presentation document for the consultation of March 2016, the Commission reiterated that these areas fall mainly within the competence of Member States and that its role was to 'guide' them. Such concerns are valid because, in the absence of external oversight concerning the way in which social rights are handled, which is not limited to workers' social rights, the action of European institutions in countries 'receiving financial assistance' is incompatible with the standards of the European Social Charter or the universal principles of the United Nations.

In the case of Greece, the European Committee of Social Rights had considered that some of the labour law reforms and cutbacks to pension payments violated the right to fair remuneration and the right to social security guaranteed under the European Social Charter.

In December 2015, Juan Pablo Bohoslavski, who was appointed as Independent Expert on the effects of foreign debt and human rights by the United Nations Human Rights Council, had published a report at the end of his visit to Greece. His evaluation of the social impact of the European Commission's third economic adjustment programme for the stability of Greece was very critical insofar as the European Commission had not taken into account the social impact of the two previous adjustment programmes. At the end of a fact-finding visit to the European institutions undertaken from 30 May to 3 June 2016, the same UN expert published a report examining the measures taken by the European institutions following the sovereign debt crisis from a human rights perspective. The expert met with representatives of the IMF, the old Troika, the European Commission (and its Structural Reform Support Service) and the European Central Bank. He also met with representatives of the Eurogroup Working Group, the European Parliament and the European Economic and Social Committee (EESC). Given that a comprehensive review of the impact of the debt crisis on European Union countries was impossible, the expert's mission was limited to Eurozone countries subject to strict conditions for the granting of loans. According to the rapporteur, the European Union's Member States and institutions are obliged to ensure that human rights are observed in the implementation of austerity or structural reform measures, both at the international and European level. Concerning the European Pillar of Social Rights proposed by the European Commission, the expert considered that it should be based on a solid foundation that should not only reflect the obligations of the EU Charter of Fundamental Rights and the Community acquis, but should also concern all EU Member States and not just those in the Eurozone. In particular, the expert encouraged the pursuit of efforts enabling the EU to accede to the European Convention on Human Rights and to consider the EU's accession to the European Social Charter, as revised in the spirit of the interdependence, indivisibility and equal importance of all human rights.

#### References:

European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0010&language=EN&ring=A8-2016-0391>.

The European Pillar of Social Rights, MEMO and COM/2017 0250 final, 26 April 2017:

[http://europa.eu/rapid/press-release\\_MEMO-17-1004\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-1004_en.htm);

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0250&from=EN>.

Reflection paper on the social dimension of Europe, COM(2017) 206, 26 April 2017: [https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-social-dimension-europe\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-social-dimension-europe_en.pdf).

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights,



particularly economic, social and cultural rights on his mission to institutions of the European Union, 28 December 2016, 34th Session, 27 February - 24 March 2017: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/442/13/PDF/G1644213.pdf?OpenElement>;  
<http://www.refworld.org/docid/58b009174.html>.

#### **4.2. COORDINATION OF SOCIAL SECURITY SYSTEMS/POSTING OF WORKERS: COURT OF JUSTICE RULING**

On 27 April 2017, the Court of Justice of the European Union (CJEU) ruled in favour of the German cruise company A-Rosa which employed 90 seasonal workers from 2005 to 2007 under Swiss contracts (through its Swiss subsidiary) on two ships that were operated on French rivers. These workers were not therefore registered with the French social security office as permitted by European Regulation No 1408/71, not challenged by the Posted Workers Directive of 1996.

Following an inspection of the two boats, carried out on 7 June 2007, the URSSAF (*Union de recouvrement des cotisations de sécurité sociale/the French Welfare Contributions Office*) found irregularities concerning the insurance cover of salaried workers performing hotel and catering activities. This finding gave rise to a recovery notice sent to A-Rosa on 22 October 2007, to the tune of over two million EUR in respect of arrears of social security contributions to the French social security system for the period from 1 April 2005 to 30 September 2007. During these inspections, A-Rosa provided an initial batch of E 101 certificates (since renamed A1), for the year 2007, issued by the Swiss Social Insurance Office, under Article 14, paragraph 2(a), of Regulation No 1408/71.

A-Rosa lodged an appeal against these back payments before the social security court of Bas-Rhin (France). This appeal was rejected in the ruling of 9 February 2011. This jurisdiction effectively considered that A-Rosa's activities were entirely geared to the French market and they were carried out in France on a habitual, stable and continuous basis, so that A-Rosa could not rely on Article 14(1) of Regulation No 1408/71, which it had invoked in its appeal, since this provision governed the particular situation of posted workers. The CJEU ruled against France: 'Regulation No 118/97, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, is binding on both the social security institutions of the Member State in which the work is carried out and the courts of that Member State, even where it is found by those courts that the conditions under which the worker concerned carries out his activities clearly do not fall within the material scope of that provision of Regulation No 1408/71'.

The low-cost operator Ryanair commended this ruling in a press release. It also mentioned that it would claim back 15 million EUR from the French authorities. The ruling revealed the scale of the challenges involved in revising the Posted Workers Directive with regard to the fight against social dumping and unfair competition between EU countries, but also within the European economic area.

Reference:

Judgment of the Court of Cassation, France), made by decision of 6 November 2015, received at the Court on 23 November 2015, in the proceedings *A-Rosa Flussschiff GmbH v Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales (Urssaf), d'Alsace, venant aux droits de l'Urssaf du Bas-Rhin and Sozialversicherungsanstalt des Kantons Graubünden*, 27 April 2017:

<http://curia.europa.eu/juris/document/document.jspx?text=&docid=190167&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=529156>.

## **5. INTERNATIONAL ORGANISATIONS HAVE THEIR SAY**

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### **5.1. SPRING MEETING OF THE INTERNATIONAL FINANCIAL INSTITUTIONS**

At the spring meeting of the international financial institutions, held from 17 to 23 April 2017 in Washington, the International Monetary Fund (IMF) and the World Bank reiterated their concerns in relation to protectionist tendencies with adverse effects on growth. In her keynote speech to the spring assembly of international financial institutions, Christine Lagarde, the managing director of the IMF, summed up the basic message as follows: *'We should not jeopardise the engine of trade'*. On this occasion, the representatives of these financial institutions issued a new indictment against protectionism while also arguing in favour of international trade, which was undermined by critiques by the Trump administration and by the impact of Brexit. On 18 April, the IMF published its growth forecasts for the world economy in 2017. It foresaw a slight rise and thus raised its prediction for this year to 3.5%, up from the previous 3.4%. On the other hand, the international financial institution was less optimistic in the medium term due to 'protectionist' tendencies.

Reference:

World Economy Outlook, Gaining Momentum, IMF, 17 April 2017:

<http://www.imf.org/-/media/files/publications/weo/2017/april/pdf/c1.ashx>.

### **5.2. OECD REPORT: REPAIRING GLOBALISATION**

The Organisation for Economic Cooperation and Development (OECD) intends to *'support national governments and the international policy dialogue to advance a fairer and more inclusive globalisation, to ensure that the benefits are more widely shared,*

*and that the rules of the game are more ambitious, economically, socially and environmentally, and are also more enforceable*’ in this report, which was published while the French presidential election campaign was in full swing.

Reference:

Fixing Globalisation: Time to Make it Work for All, OECD, in series: ‘Better Policies’, Paris, 27 April 2017:

<http://www.oecd.org/social/fixing-globalisation-time-to-make-it-work-for-all-9789264275096-en.htm>.

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