Statement

of the German Confederation of Trade Unions

Brexit – negotiating options in DGB eyes
New opportunities for Europe

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EXECUTIVE SUMMARY

Even if the British referendum on remaining in/leaving the EU may be seen as punishment for the long-standing British policy of austerity and liberalisation and the decision was very close: The European peace project had no longer enough pulling power to light the way for UK citizens and persuade a majority of them, unlike in the 1975 referendum, to remain. The discussion about taking back national sovereignty so as, above all, to control migration flows is a sham argument. The precarious situation of many British women and men can be ascribed to the massive undermining of minimum wages (legally enshrined for example through „Seasonal Agricultural Workers Scheme"), lack of investment in education and training along with a failed industrial policy and inadequate investment in public services.

The view of the DGB – still a protagonist of the European Project - is that this brings with it several implications:

The value and achievements of the EU must be brought home to Europe's peoples. Future initiatives for a „Better Union" from European heads of state and government and those of the European Parliament are a first step along with the European Pillar of Social Rights. That this is not enough has been made plain with the Brexit vote. The DGB here lays emphasis on its long-standing demand for a social progress protocol that will ensure that collective and individual social rights such as co-determination, the right to strike, binding collective wage agreements, the right to social insurance, cannot be measured against the single market freedoms contained within the three-stage test drawn up by the ECJ. Serious malaise about this found expression in the British people's rejection of any future ruling from the ECJ.

The negotiations on an exit treaty must go hand in hand with those on transitional arrangements and a new treaty. The DGB strongly backs the aim of chief negotiator Michel Barnier to conclude the negotiations as rapidly as possible. For: Whatever the outcome, it will be worse than the position before the referendum whilst, at the same time, huge

administrative resources are being devoted to this agreement that could be much more urgently earmarked for positive Community projects.

Instead of deepening integration the topic now is crisis management in the row over closing the financial gaps in the EU budget, preventing the break-up of the UK as well as preserving the „Good Friday" Agreement between Northern Ireland and the Irish Republic.

The hidden negotiating positions disclose only very slight common ground. Compromise formulas can, however, be imagined and be built upon existing models such as the European Economic Area (EEA) or the Swiss accord and/or grow into a new continental partnership.

With this in mind, the DGB view is that the EU and its governments should clearly state their political will of keeping the door wide open for the UK to stay a member. For the view of German workers is that nothing is worse than to create off the EU coast a country with race-to-the-bottom standards a la Singapore, attracting investors with under-cutting taxes and rock-bottom standards in employment and welfare rights as well as in environmental and consumer protection.

The key points of the negotiations should therefore from the DGB's point of view be grouped around the following three priorities:

- I.) **Employee protective rights at the workplace, in particular, the rights to union representation and co-determination – social insurance and union rights must be settled clearly** in the letter and spirit of preserving acquired rights and legitimate expectation.
- II.) A clear settlement of financial questions, in particular as regards endowment of the social and structural funds. With reference to Art 70 of the Vienna Convention on the Law of Treaties the retention of extant rights and obligations must be written into the treaty.
- III.) The EU should clearly state that the door for the UK to remain is wide open. Art 50 TEU allows this. A break-up of the UK must be avoided at all costs.

I SOCIAL GOVERNANCE

How are workers'/civil rights affected?

The EU ensures people's freedom of movement (Art. 3 Para. 2 EU-Treaty (TEU), Art. 20, 21, 45, 49 Treaty on the Functioning of the EU (TFEU) and guarantees in their employment the maintenance of acquired civil rights (Art. 48 TFEU). EU law thereby imposes expenditures on member states' budgets and subjects these to the jurisdiction of the European Court of Justice (ECJ).

If one is to determine how these rights and obligations are to be treated as transnational issues within a changed legal context, the DGB's view is that the following principles must apply:

In line with the principle under international law of legitimate expectation, those affected must fundamentally be able to rely upon the continued use of the current right in future. The question to examine is whether this confidence in the applicability of EU law can remain in force or whether it ended with the leave declaration under Art 50 of TEU.

Furthermore, instances of acquired rights are to be defined. According to international customary law, proprietary rights are covered by this in the broadest sense, that is, rights set out in treaties that were granted by the state along with concessions, licences and the recognition of certificates and documents.

Also to be determined is whether and to what extent workers can benefit from current EU legal provisions and concomitant rights. Here too exit, transitional and future agreements should disclose concrete formulations with regulatory clarity.

The basic problem in any evocation of these fundamental rights is that the legal scope is contentious and has to be examined case-by-case – just as implementation depends upon the readiness of British judges to apply international law. So, any agreement on leaving or transition should set in concrete the scope as well as applicability of acquired rights regarding subsequent exercice thereof within individual legal fields.

> The DGB fundamentally urges a broad interpretation of legitimate expectations so as to avoid any loss of rights for workers. The persistence of rights and obligations that were anchored within the territory of the UK must be guaranteed through treaty regulations. Equally, rights and conditions substantiated on EU territory must independently be enshrined in corresponding EU provisions.

Individual legal fields:

Social security laws

If workers exercise freedom of movement, the country where they are employed changes. This does not lead to any change of labour law nor of social legislation linked to this employment. Any such change is regularly detrimental in terms of social legislation: social security laws exclude the maintenance of pensions if the claimant lives outside the country liable for benefits or tie any benefit claim to the insured person's participation in the social security system of the obligated state for long enough to enjoy the right to claim that benefit. The EU system set out in Art. 48 TFEU thereby foresees the aggregation of insured periods and possible withdrawal of benefits. These rules guarantee rights acquired in a member state in case of any change of status in social legislation.

What's key to this system is Regulation (EC) 883/2004 that regulates the co-ordination of social security systems of member states. What's more, Art. 24 Directive 2004/38/EC and Art. 7 II, 12 REG (EU) 492/2011 forbid any discrimination against EU nationals that have exercised the right to freedom of movement in awarding „social perks" to workers and their families; Art. 16 Directive 2004/38/EC guarantees for each EU national after five years of legitimate residence a permanent right to remain quite independent of any pre-conditions and status.

Regulation (EC) 883/2004 identifies the international ambit of social rights for member states and, furthermore, backs up the international effects of their social legislation through benefit assistance and awards, the aggregation of insurance periods. What's more, it contains more equivalence rules for sickness, accident-at-work and workplace illnesses, invalidity, age and death, unemployment, maternity benefits and paternity leave entitlements and family allowances on equal terms. The law on co-ordination guarantees with the aggregation of insured periods that, within EU territory, claiming for social security benefits is possible without prejudice in every EU member state.

If a member state leaves the EU, all commitments arising out of this Europe-wide coordination of social legislation lapse. In other words, EU nationals in the departing state no longer have access to the labour market and no right to remain just as, vice versa, the nationals of the departing state can no longer work and live in the EU in future – unless they get a special permit. So, EU nationals continuing to work and live in the departing state and vice versa can expect various disadvantages in their civil rights vis-a-vis the prevailing position in EU law.

- The protection guaranteed in EU law against discrimination on grounds of foreign citizenship vis-a-vis local nationals lapses;
- The exiting state and member states can now define their social security legislation in their own way and that might create gaps in coverage for people working and living there or cause them to experience paying twice over for social security;
- The protection grounded in EU law from insured and employed periods on the basis of international insurance regimes in health, safety, pension and unemployment insurance through the aggregation of such periods also lapses;
- Benefit payments (e.g. sick pay, accident pay-out or old-age pensions and dole money) can no longer be sent abroad;
- Family allowances are no longer paid out;
- No protection from sickness or need for care on the basis of relevant insurance regimes within another state;
- Co-operation amongst social security bodies on cross-border insurance processes lapses.

For the DGB all this prompts the urgent demand for establishing – on the basis of Regulation 883/2004 – rules for co-ordinating social legislation in any exit, transitional and/or post-transition treaty. Migrant labour and working in the delivery of services will continue to exist even if the validity of basic freedoms has been scrapped by leaving. The basis of co-ordinating social legislation does not reside in guaranteeing such basic freedoms but in dealing with the consequences of cross-border employment.

European co-ordination of social security legislation can retain its validity between the EU and the exit state if:

1.) its continued validity **were to be agreed in the exit treaty**; but this would mean further subordination to ECJ jurisdiction and comes close to a partial suspension of leaving; its acceptability to the UK is therefore likely to be slight.

2.) this is agreed in identical terms as a multilateral coordinating framework **within a free trade agreement**.

If this could not happen there could still be as a conventional instrument

1.) **bilateral regulation** of co-ordination via a social security agreement. This could be regulated along the lines of EU legislation with regard to border work or commuter working Another possibility would be

2.) an intergovernmental **alliance of as many member states as possible on the lines of the Schengen system or the EMU.**

The DGB, on the basis of these options, urges the parties to strive within any transitional deal and/or future treaty to create a multilateral co-ordinating framework between EU and exiting country:

Within any future free trade agreement between EU and departing state (Art. 212 TFEU) there could be an accord on co-ordinating social security rights on the basis of current EU law. This would ensure that co-ordination took place in future according to proven regulations set out in EU law. Even so, instead of the ECJ, a new court set out in the treaty deal would have in future to decide on the content and interpretation of the co-ordination rules.

The advantage of this path is that the multilateral effect of current EU coordination law would continue to apply post-Brexit, and the departing state and several EU states would thus be bound to the familiar and shared legal regime.

European Works Councils

Once its membership is ended, the UK government must decide whether it scraps or retains the law on implementing the directive on European works councils (EWC-Directive). Up to that point there can be no legal amendments to the status quo for European works councils, SE works councils and special negotiating bodies. This means that the mandates of British EWC members remain unaffected until the UK's implementation law is lifted and any agreements pursuant to holding such a mandate remain in force. In so far as the British law-maker thereafter decides not to continue to apply EU law such as the EWC Directive – as part and parcel of joining the European Economic Area (EEA), say – but may decide and indeed does decide to rescind EU law (as in the case of the agreement on separate bilateral treaties with the EU) there at least still remains, in cases of EWC agreements not governed by UK law, the possibility – according to current legislation (see Art. 1 Para. 6 EWC-Dir; § 1 Para. 3 EWCL) – to include British workers as EWC members by extending its purview into the agreement. For current or pending negotiations on setting up an EWC one may therefore already take into account that the UK falls within the scope

of the EWC agreement and hence guarantee EWC members' mandates. The DGB therefore assumes that in such a likely event there need not be any huge loss of British mandates. The situation with EWC agreements and deals on works councils in European Companies (SEs) that come under British law looks very different. Here – depending on the outcome of the exit negotiations - it remains open whether they remain in force or will have to be renegotiated.

Because of the initial social policy „opt-outs" of Conservative British governments under Thatcher and Major, the EWC-Directive 94/45/EC (Predecessor of the freshly drafted EWC-DIR 2009/38/EC) only entered into force in the UK on 15.12.1999 through DIR 97/74/EC with a two-year implementation deadline. Nevertheless, several large UK firms had already set up an EWC beforehand. EWC-agreements were concluded then according to Belgian, German or French law. Normally, UK employees were also encompassed within the EWC.

Therefore the DGB urges that any transitional arrangements guarantee the continuation of all EWC and SE-Agreements and retain the conditions for national implementation as based upon the collectively delineated EU-Directives 2009/38/EC, 2002/14/EC, 2001/86/EC, 2001/23/EC and 98/59/EC. Even so, the following elemental rights of European and SE-Works Councils (as well as for members of a special negotiating forum on establishing a E- or SE-WC) must be retained:

- The UK remains under the ambit of the agreements and legal competences of European and/or SE works councils, i.e. in relation to the definition of firms operating community-wide, transnational issues and the right to information and consultation, the UK's quality as a (fictive) member state of the EU is assumed;
- The right of UK-based employees to participation/co-determination in/of corporate decisions, including an active and passive right to vote in any ballot for employees in a European or SE works council;
- Right to leave of absence on full pay so as to be able to take up the rights and obligations of membership of a European/SE works council; that includes the right to summon experts and further training at the cost of management, in so far as carrying out the work of the European or SE works council is required;
- Provision of protective rights and guarantees for British office-holders in E/SEWCs in relation to the legitimate exercice of their EWC/SEWC activities, especially from discrimination, unfair dismissal or other forms of punishment; the rights of office-holders should not be frozen and they should be allowed to help develop further the relevant directives;
- The right to legal protection before UK and EU courts as a separate legal personality as either a EWC or SEWC;
- All extant stipulations (rights) thereby continue to apply for the members of a special negotiating forum on establishing a European or SE works council.

Residence rights for EU workers

Personal freedom of movement in the EU has two dimensions: the right to enter and remain and the right to equal treatment with local nationals. Since three-quarters of EU migrants go to the UK in search of work one may assume that the focal point of controls and limits in the form of work permits will be this category. The British government has just adopted an extreme position regarding this very question: Brexit means control over the number of people who come to the UK. It has undertaken in pursuit of this goal to end freedom of movement.

Current legal provisions in the UK mean that in future EU citizens will come under the same visa conditions as people from non-EU states. Work permits are restricted to ca. 55,000 a year. This means that if the UK leaves the EU but might wish to remain part of the customs union or have access to the single market, it would have to accept free access to the labour market for EU nationals as well as Norwegians or Swiss.

The British government says it is pursuing a two-part agreement with the EU: on the one hand, special treatment of EU nationals whereby the likelihood is of enhanced mutual gains for UK nationals and of easier access to the single market; on the other hand, other migrants.

Future migration controls, the UK government desires, should consist of three elements: immigration of the highly qualified remains welcome. Immigration of the low-skilled will be restricted. The autonomy of low-wage migrants shall be reduced. A work-permit system could be amplified by an exemption regime to grant EU nationals another form of treatment.

In international law the principle „pacta sunt servanda" applies, i.e., once rights set out in a treaty have been exercised they continue to apply even after a potential rescinding of that treaty.

Even so, implementing international law, if not applied by national bodies, requires a lengthy procedure at the International Court or the European Court of Human Rights.

On these grounds, the DGB's view is that all issues relating to right of residence in the broadest sense – including professional recognition (see below) – must be embraced within a corresponding stipulation/clause in the treaty of expiration that sets out the continuing validity of the relevant EU-*Acquis* , especially unlimited residence and work permits for all EU nationals who are in the UK up to and including the point of exit.

Employment law in the broadest sense and posted worker directive

Working time legislation, protection for prospective mothers and parents, parental time-off rights, collective redundancy rights, unfair dismissal protection, transfers of undertakings: as regards current *acquis* in social and labour legislation, minimum standards laid down in EU law, especially as regards the afore-mentioned legal fields, must be preserved in any future transition or trade agreement so as to avoid subsequent social dumping.

Leave: The calculation of time-off should be retained along with relevant ECJ case law on this topic. Thus, e.g., holiday entitlements can occur during sickness, time-off must also contain defined variable salary components.

Discrimination: The British „Equality Act 2010" codifies existing anti-discrimination legislation and should remain in force.

Agency workers: The British agency worker legislation from 2010 is (also) pretty unpopular with British firms. The 12-week qualifying period, set out in the legislation, is already an EU concession to UK demands. This qualifying period means that agency workers, after employment lasting 12 weeks, must be taken on under the same working conditions as full-time employees.

Equal pay for men and women: The British government's white paper on exiting the EU sets out that British nationals can have direct recourse to the provision of Art 157 TFEU in any cases where a corresponding gap exists in UK law.

Continued validity of the posted worker directive: Preventing wage and social dumping along with the retention of employment protection standards and working conditions must act as elemental criteria for any continuation of posting workers or similar procedures after exit takes effect.

Therefore, securing the continued applicability of all entitlements and stipulations set out within Directive 96/71 EC for posted workers who work there temporarily on such a basis is essential.

At the same time, the EU is now offering posted workers of British origin the prospect of all provisions and entitlements remaining in force in EU member states. Hereby, the status quo of directive 96/71/EC and all future amendments that may be adopted during the revision process remain binding and effective.

Transfer of undertakings: In particular, the directive on the preservation of entitlements in any transfer of undertaking (directive 2001/23/EC) should be put into British law. This is not only an important point from the viewpoint of employees but also with regard to a level competitive playing field for firms in the single market and British firms.

The DGB urges a transitional regulation in relation to the *acquis* in EU employment legislation and social policy in which it is confirmed that the UK commits to the status quo for all EU nationals who – up to the point when exit takes place but possibly

beyond that – have justified corresponding legal claims. The DGB view is that the same holds true for employee rights that are due up the point of full-scale Brexit and/or are set out in exit, transition or post-transition treaties.

As for the posted worker directive, which is especially important for cross-border jobs, the UK should commit to honour over the long run all entitlements under directive 96/71 EC in a transitional regulation. Optionally, this should at the same time serve as the basis for a legally enforceable arrangement for future postings that affect the UK and EU member states. Furthermore, the *acquis* in labour law and social affairs legislation should be retained in a corresponding agreement.

Recognition of professional qualifications

As regards professional qualifications and access to/furtherance of regulated professions, service providers from other EU member states who have already begun their activities and/or have settled for sustained economic activity inside the EU can rely upon acquired legitimate interests.

In Germany's case, tenured British officials can be guaranteed via recognition of their professional qualifications that they can remain employed as civil servants.

To avoid legal uncertainties and controversy over whether legitimate interests are in play or not, the DGB urges that corresponding conditions be taken up in the exit, transition or post-transition treaty.

The key thing here is that any undermining of the German training system is avoided while the equivalence of professional qualifications is a pre-requisite for recognising them.

III ECONOMIC GOVERNANCE - MAINTENANCE OF FAIR COMPETITION

EU-Budget and structural policy

Already, or right at the start of the exit negotiations, a row has begun on the future EU Budget. The EU is rumoured to be demanding UK contributions of up to €100bn while the UK has supposedly lodged its entitlement to a share of EU assets that may run to an estimated €154bn.

Questions on the EU-Budget are of extraordinary importance for both negotiating partners. The UK contributes around 12% of the EU-Budget. The gap that Brexit will leave each year in this budget is estimated at €10bn. This can only be filled with higher contributions from other member states or spending cuts (including in aid programmes). All the same, the British government has let it be known that it wants to continue to take part in specific programmes. The question as to how far the UK post-Brexit will live up to its obligation to the multi-annual financial framework (MFF) is subject to various different legal interpretations.

The leaf opinion of the House of Lords concludes that there are no such obligations under international law. Even so, there are good grounds, particularly Art. 70 of the Vienna Convention on the Law of Treaties and the principle of „pacta sunt servanda" in international customary law for the maintenance of this obligation. The legal opinion, however, endorses to a degree that any legal case for retention of this payment obligation at the International Court is bound to be protracted and hard to plead successfully. A fundamentally positive declaration was given setting Brexit as the deadline for paying into the structural and investment funds as well as the CAP.

For Germany 28 billion Euros have been earmarked in the financial period 2014-2020. That again raises the question at EU level about how far „rich' member states such as Germany require Brussels structural aid at all. The European Commission is due to present proposals for restructuring the EU Budget. The DGB backs retaining a strategic focus on structural change challenges. The structural funds are the biggest instrument of EU industrial policy and must help both the structurally weak regions and those hit especially hard by structural change to become fit for the future without deepening regional disparities.

The DGB is of a mind to join the debate on restructuring the EU budget plans by insisting that all regions receive structural aid on a continuing basis.
These discussions about supplementary funding – in particular the structural funds jointly developed with social partners – must not be about cuts in favour of other instruments. We wholly reject any proposals to beef up the Juncker Plan (EFSI) at the cost of the European Regional Development Fund (ERDF)
For the key with all projects is, together with social partners, to create or retain high quality jobs on at least a living wage and to support structural change. EU structural aid is an important tool for bringing the EU closer to its citizens, including Germans, and keeping it intact makes Europe as a concept tangible and is an important weapon against euroscepticism.

Single market freedoms, in particular in financial services

The starting point for trade in services is the principle of territoriality. That may well mean that, post-Brexit, British courts will apply national law on services insofar as these are available on the British market and the service provider has her/his place of business there. Art. 50 TEU in this case precludes the exercice of the principle of legitimate expectations so any continuing validity of EU law can be excluded. Vice versa, that also means for the financial services sector that British banks post-Brexit can no longer market products in the other EU-27 countries as an EU passport in another member state will be required. They will lose the benefit of a single EU passport.

As it is presumably a vital UK interest to carry on marketing financial products in the EU single market, this area is in our eyes an important bargaining chip as the EU *acquis* regarding protective standards will act as a barrier to market entry for the UK.

Product safety and consumer protection

These fields are part of public law. So, the starting point is again territoriality. That is, once Brexit takes effect, the different GB courts will apply the relevant law on goods imported to their markets. The principle of legitimate expectations – namely that goods from the EU are fundamentally in compliance with conditions obtaining on the English market – is precluded by Art. 50 TEU. The role of Brexit in this area is therefore substantial.

The same holds true for the sales of an entrepreneur with place of business in the EU to British consumers. In this case, EU businesses must meet the demands of British consumer protection rules.

The DGB therefore urges that, within any exit or new treaty or in transitional arrangements, the continued applicability of EU law regarding consumer protection standards must be agreed upon. The same considerations apply to environmental protection standards so as to avoid any regulatory race to the bottom.

Public procurement law

This legal area comes under public law. The starting point is thus territoriality whereby British courts can apply UK procurement law. Two cases can be distinguished here: concessions and assigned contracts must be regarded as acquired rights. This can simply be derived from the principle „pacta sunt servanda. " In this case, then, the three EU directives concerning public contract procurement are to be applied. This applies equally to the phase of contract completion and sub-contracting, even when such trades are placed post-Brexit. The case is quite different when a bidding process takes place pre-Brexit but the awards procedure remains wide open. Here there can be no recourse to legitimate expectations.

With its new procurement directives, the EU has recognised the strategic purchasing power of public authorities. Environmental and social factors have been substantially upgraded. There are now important stipulations on consumer protection, when it comes to awarding social contracts, but also about sticking to distinct norms in social and labour law. Therefore the DGB view is that legal clarity must be established per contract to guarantee the exercice of EU procurement law beyond the point of Brexit generally but at the very least for tender processes already under way. Furthermore, on the EU side it must be unilaterally standardised that:

- Procurement awards and concessions to British suppliers through public contractors in the EU be recognised in accordance with EU procurement;
- EU procurement law be applied to the phase of contract completion;
- EU procurement law be applied to completed calls for tender.

III TRANSITIONAL TREATY; NEW ACCORD AND EU-NEW

The modalities for ending membership are extremely complex since, along with the priorities that arise from the employees' viewpoint, many more regulatory areas are affected – above all those in which EU regulations take direct effect.

The DGB view is that this likely makes a provisional continued application of distinct regulations necessary, as a two-year deadline is not enough.

Given that, according to Art. 50 Para. 3 TEU, a unanimous Council vote is required; such an option must be considered asap and be readied with the remaining EU-27 governments.

The DGB is aware that there are various legal viewpoints as to the question whether a unilateral withdrawal of an exit application is legally possible or whether, rather, this requires the agreement of all EU member states. Our view is that there are, all told, many convincing arguments why a unilateral declaration is allowable: The Vienna Convention on the Law of Treaties (Art. 65-68) declares that any notification of intended exit from a treaty can be revoked at any time before it becomes legally effective. Even if Art. 50 TEU as *lex specialis* takes precedence over this definition; the Vienna Convention still acts as an interpretative aid since Art. 50 is silent on this turn of events. What's more, Art. 50 TEU also foresees a re-entry. Moreover, the fundamental principle in international law of „pacta sunt servanda"backs this interpretation. One counter-argument used is that once the deadline for the exit negotiations has run out it cannot be arbitrarily retained by randomly withdrawing the exit application and then reinstating it. Such legal abuse can be met all the same by mitigating legal means. The competent legal authority here, the ECJ, could define a repeated exercice of Art. 50 TEU as a single proceeding, which is liable to the two-year deadline for any exit.

Otherwise, the result would be that a new member state government, which adopts a pro-EU attitude, possibly backed by a parliamentary or referendum decision, would have no opportunity at all to reverse the exit process. This situation is, given the June 2017 general election result, not improbable. The member country would be thrown out of the EU and forced to re-join. **The EU should remain a community built on solidarity and not become a closed shop.**

Given the silence of Art. 50 TEU on the issue of a unilateral reversal of any exit notification the conclusion should rather be drawn that, in line with the general treaty goals, EU nationals should be supported if they wish to remain within the EU. If the nationals of a current member state change their minds before the exit takes effect, they should be allowed to reverse their decision for expedient reasons. Otherwise, they would be forced to wait for a year before exit takes effect and then re-apply for membership. Such a „right to rethink"also meets the principle of „favor contractus", that can be found in Art. 68 of the afore-mentioned Vienna Convention.

The DGB therefore takes the position that Art. 50 TEU in alliance with Art. 65- 68 of the Vienna Convention on the Law of Treaties allows a unilateral withdrawal of any exit application.

How do we see any future agreement with the UK?

a) Negotiating principle

The negotiations with the British government should be conducted on the principle that the current cohesion among all other member states remains intact, that the EU speaks with one voice and there can be no bilateral negotiations over individual chapters between Great Britain and individual member states. Otherwise, there might be a temptation given that, for example, 29% of workers from Poland and 7% from Romania and Portugal work in the UK, to strike a special accord on employee freedom of movement with in return the UK offered easier access to their markets.

b) Transitional agreement

According to Art. 50 Para 3 TEU a member state's exit has as effect that all rights and obligations under the treaties are ended whilst, on the other hand, clauses transformed into national law remain valid. Although Art. 50 TEU defines any exit treaty and an accord over future relations as two separate points in time, they are nevertheless linked together insofar as „the framework for future relations of this state with the Union is taken into account. „The substance of the exit accord is to a large extent determined by the nature of future relations.

The DGB therefore takes the view that a flexible approach should be chosen to guarantee that the exit treaty should already pave the way for future arrangements regarding the afore-mentioned core issues.
Whatever the new treaty looks like, our view is that either way it requires transitional provisions to mitigate the consequences of the exit: In particular, transitional provisions for the protection of all individual, subjective rights won based on EU legislation. Furthermore, these affect issues about the conclusion of EU programmes as well as connected payment obligations within the multi-annual financial framework (MFF).
As it is unlikely that the exit treaty can be more rapidly concluded than the accord on future relations, the effective date of the exit treaty should depend upon the effective date of the future accord.

c) New Accord

To avoid a trade war, especially with non-tariff trade barriers such as regulatory standards in the area of worker, consumer, environmental protection, the DGB view is that a compromise regarding market access in both directions must be struck.

The most favourable scenario would be a combination of positive (national legislation as the basis for „pass porting") and negative integration (abolition of customs duties and non-tariff barriers).

The DGB insists that an accord should be sought that leans towards that with the Ukraine – a so-called „deep and comprehensive free trade agreement"(DFCTA), that largely encompasses the single market *acquis*. The advantage of a DCFTA is that it can be tailored to the various negotiating positions.

It does not open any automatic access to the single market and includes no obligation on freedom of movement, budget contributions or subordination to the ECJ's rulings. This would create the possibility of disentangling the single market freedoms seen by the EU as inseparable and, acting on the „do ut des" principle, enshrine them in a new treaty – or indeed not at all.
With such a treaty customs duties would be avoided even if certificates of origin are required. What's more, an agreement could be struck that in all industrial segments where the UK institutes the same external duties as the EU, certificates of origin need not be monitored and where standards and controls in line with the EU regime are maintained there would be no need to control such certificates.
What would remain to be resolved is the possibility of managing trade with non-tariff barriers. If one chose the accord with Ukraine as blueprint, one might agree on the obligation on the UK to take over relevant EU regulations, standards and procedures.

The prospect ahead – Brexit as opportunity

Brexit has made the process of European integration reversible for the first time. The political copycat effect for other member states is disastrous. The British exit vote is a warning signal for the EU. The issue in the current exit negotiations is not only about economic, trade and social relations towards Great Britain but also the EU-27's political future. For here, too the losers of globalisation reject current policies geared towards international competition and open markets. EU-based workers expect Europe's politicians to deliver protection from the negative effects of globalisation and unfair competition among international rivals.

Growing inequality in society is not only an Anglo-Saxon problem but, rather, the maintenance of social cohesion is a European challenge

Brexit must therefore be seized as an opportunity to usher in an unrestrained argument for Europe.

Along with labour market programmes such as the EU Youth Guarantee basic structures must be sorted out such as

1.) Putting an end to the ruinous competition between member states to the detriment of workers;
2.) Correcting the defects of the monetary union by creating a genuine economic and fiscal union, harmonisation of corporate taxation, fighting tax avoidance/evasion and restoring proper order to capital markets;
3.) Creating an ambitious investment offensive in support of strategic investments and modernising infrastructure (see DGB: Ein Marschallplan für Europa: http://www.dgb.de/themen/++co++985b632e-407e-11e2-b652-00188b4dc422).
4.) Europe needs success stories that can be experienced and measured by its citizens: A social progress protocol is required: individual and collective worker rights must along with fundamental rights enjoy priority over single market freedoms.