



WHAT CAN THE EU DO TO CONTAIN THE RISK OF THE „BREXIT“?

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Executive summary

In 2013, British Prime Minister David Cameron pledged to renegotiate the terms of UK membership in the EU and have the new settlement agreed by the British people in a referendum, should the Conservatives win the 2015 general election. With the vote approaching, and the British exit (“Brexit”) still a conceivable option, this paper discusses the most probable post-election scenarios in relation to this renegotiation-referendum pledge. It argues that a Labour victory would only mean postponement of the referendum to a later date. In its final section, the paper proposes how the EU should approach the upcoming UK electoral campaign and the actual renegotiations and referendum, should they take place, covering both the substantive and symbolic issues at stake.

I. Introduction

1. Euroscepticism has engulfed British Conservative and right-wing politics. UK-EU relations are becoming ever tenser. In January 2013, British Prime Minister David Cameron outlined a plan for holding a referendum on continued UK membership in the European Union, on the basis of a new settlement between the two to be negotiated after a Conservative victory in the 2015 general election. Since then, a British exit (“Brexit”) has come to be recognised and conceivable option. The debate is to be had among the British – yet the EU too can

strongly affect its outcome. This paper looks at how the EU should manage the in-out referendum prospect and whether it can itself contain the chances of the Brexit becoming a reality.

2. The paper is structured in three parts. To start with, it tracks the current Eurosceptic surge and recalls the defining moments and issues in UK-EU relations since the formation of the Coalition government in 2010. Then it outlines possible scenarios for the 2015 elections and their impact on the referendum issue. Finally, it offers recommendations of what the EU could do – and of what it should not do – to minimise the risk of the renegotiation-referendum process leading to a UK withdrawal from the EU.

II. Historical context – how the “Brexit” issue came about

3. Ever since the formation of the Coalition government in May 2010 – and Prime Minister David Cameron’s acquiescence in the Lisbon Treaty – there has been considerable unrest among Conservative members of the Parliament over Cameron’s European policy. This led to several large rebellions against the government, weakening the Prime Minister’s control of his party and pushing the UK on a collision course with the rest of the EU. Both domestic and EU developments of the period have highlighted the UK’s ambivalent position of a



“semi-detached” EU member and have questioned its future role in the European integration project.

This section of the paper summarises the key events and issues shaping British European policy in the Cameron era, setting the stage for subsequent discussion of post-election scenarios.

4. “Europe” had already posed a fundamental challenge to the unity of the Conservative party during its previous government tenure in the 1980s and especially the 1990s.

The long opposition span between 1997 and 2010 enabled the party to rally behind a “Euro-sceptic” criticism of European policies of the serving Labour government. The underlying division between the pragmatic (discounting the few surviving Tory “Europhiles”) and Euro-sceptic wings would nevertheless still occasionally re-surface, most notably over the continued membership of Conservative Members of the European Parliament of the mainstream, pro-integrationist EPP-ED group. After the 2009 EP elections, Cameron, himself a pragmatic, fulfilled his earlier promise (dating back from the 2005 party leadership contest) to take out Tory MEPs from the EPP-ED and form, along with a thin cohort of allies, a smaller, Eurosceptic ECR group. This step did appease the Conservative Eurosceptics, but it also weakened Cameron’s links and access to the influential caucus of EPP-based fellow members of the European Council, including German Chancellor Angela Merkel.

5. Back in Westminster, the 2005 and 2010 general elections led to a new intake of young, staunchly Euro-sceptic Conservative MPs, which shifted the balance of opinions within the party.¹

6. Upon the formation of the Cameron government, the Conservatives found themselves in need of compromising their European policies with those of their traditionally Europhile junior coalition partner, the Liberal Democrats.² The Coalition Programme

was, in essence, the Conservative election manifesto softened by the LibDems’ insistence on engagement and positive tone towards the EU. There were some policy-related concessions on the part of the Conservatives, too: the plan to adopt a “UK Sovereignty Act” was diluted, ratification of the Lisbon Treaty was not re-opened and the government did not initiate renegotiation of terms of UK membership of the EU (Conservatives had intended to repatriate legislative powers in social and employment affairs). On the personal level, the Tory moderate David Lidington was appointed Europe minister (a junior ministerial position at the Foreign Office in charge of, inter alia, relations with the EU).

7. David Cameron may have hoped he would be able to avoid a bruising conflict both with “Europe” and, domestically, over “Europe” – thanks to de-politicisation of the issue through the adoption of the 2011 European Union Act.³ This act provides for an obligatory referendum on amendments of the TEU/TFEU and through a not very robustly worded Clause 18 reaffirms the UK Parliament as the ultimate authority on UK legislation (in which it seeks to address recurrent worries about erosion of the central constitutional doctrine of the UK, the sovereignty of the Parliament, due to the EU membership). These hopes were, however, soon dashed by developments triggered by the progressing financial, economic and Eurozone crisis.

8. The UK found itself on the defensive over the politically sensitive issue of financial services regulation, with the government feeling obliged to protect the interests of the City of London, and, crucially, since 2010/11 it has been confronted with a new integration dynamics in the Eurozone. Especially the latter put the UK in a difficult position as this drive for further differentiated integration implied a shift of the centre of gravitas of EU strategic decision-making on economic issues towards *fora* where the UK is not directly represented. At the same time, London needed to avoid further complicating the efforts of the rest of the EU at collective action to resolve the Eurozone crisis, which obviously was in Britain’s economic interest.

¹ RENNIE, David., *The Continent or the open sea. Does Britain have a European future?* Centre for European Reform, 2012,

http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2012/rp_096_km-6277.pdf, p. 19.

² For an insightful analysis of the Coalition’s politics of Europe, see GOES, Eunice, “The Coalition and Europe: A

Tale of Reckless Drivers, Steady Navigators and Imperfect Roadmaps”, *Parliamentary Affairs* 67 (2014), 45-63.

³ <http://www.legislation.gov.uk/ukpga/2011/12/contents>.



9. These developments took place against the backdrop of a mounting rebellion of Conservative backbenchers over Europe (already back in October 2011, more than 80 Tory MPs voted against the party line in support of a motion requesting a referendum on UK-EU relations⁴) which increased the pressure on the Prime Minister to “stand up to Europe”.

10. These conflicting pressures led, in December 2011, to the (in)famous “Cameron’s veto” of a standard treaty reform to strengthen the regime of Eurozone fiscal governance. Soon after, however, the British government acquiesced in the Fiscal Compact as a separate intergovernmental treaty, binding all Eurozone and, to various degrees, most non-Eurozone member states and making use of EU institutions and procedures.

11. The steady rise of popularity of the United Kingdom Independence Party (UKIP), a right-wing populist party campaigning for UK withdrawal from the EU (which would go on to win the 2014 EP elections), and fears of a mass outflow of Eurosceptic party members (two Tory MPs did eventually defect to the UKIP in autumn 2014) and supporters to a more radical competitor became another factor pushing Cameron away from a more constructive engagement with the EU.

Bloomberg speech and beyond

12. Faced with a mounting pressure from Conservative backbenches to call a referendum on continued EU membership within the lifetime of the current Parliament, Cameron needed to regain control over the timing and terms of any such referendum while avoiding alienating the Eurosceptics altogether. So in his seminal January 2013 speech at Bloomberg he charted a plan for renegotiating the terms of UK membership of the EU and holding a referendum to confirm continued membership on the basis of the outcome of the

⁴ *The Telegraph*, EU referendum: David Cameron 'loses control of backbench' in biggest Conservative rebellion, 25 October 2011, <http://www.telegraph.co.uk/news/worldnews/europe/eu/8847601/EU-referendum-David-Cameron-loses-control-of-backbench-in-biggest-Conservative-rebellion.html> (accessed 22 December 2014).

renegotiation exercise during the first half of the 2015-20 Parliament, should a Conservative government be elected.⁵

In doing so, Cameron is trying to repeat a “renegotiation-referendum” strategy, which had already been successfully employed by the Labour Prime Minister Harold Wilson in 1974-5, to prevent “Europe” from tearing the party apart in the run-up to the 2015 elections and to consolidate his position at the helm of the party.

The speech, excellent though it may be in balancing the various messages that needed to be sent to, separately, the Conservative Party, Britain’s European partners, and the British public, gives rather little idea of precisely what Cameron intends to achieve via the renegotiation exercise. Instead, the PM focussed on more general issues of flexibility as a constitutional principle of the EU, fairness of impact of differential integration, and unimpeded access to single market for non-Eurozone members.

13. To identify policy areas where the UK might seek opt-outs or repatriation of competences, the government commissioned a Balance of Competences Review, a stakeholder consultation which was to be concluded in late 2014⁶, but to the dismay of Tory Eurosceptic backbenches it failed to immediately legislate for the post-2015 referendum.

14. The Labour Party clarified its official position on the EU referendum only much later – Ed Miliband did not match Cameron’s commitment, stating he would not support calling a referendum unless there was treaty change involving further transfer of competences to EU level.⁷

15. 2014 saw the detachment of the UK from the rest/core of the EU increase due to a number of

⁵ David Cameron, *EU Speech at Bloomberg*, 23 January 2013, <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg> (accessed 22 December 2014).

⁶ <https://www.gov.uk/review-of-the-balance-of-competences>.

⁷ *The Independent*, Ed Miliband rules out EU referendum: Eurosceptics accuse Labour of 'shoddy compromise', 12 March 2014, <http://www.independent.co.uk/news/uk/politics/no-eu-referendum-under-labour-party-eurosceptics-accuse-miliband-of-shoddy-compromise-9186163.html> (accessed 22 December 2014).



particular issues: the full opt-out (and then partial opt-in) from pre-Lisbon EU criminal law and police co-operation, David Cameron's unsuccessful attempt to thwart the election of Jean-Claude Juncker as President of the European Commission, and a recent rather pointless dispute over the UK contribution to the EU budget.⁸

Adding to this was a general (pre-election and UKIP-incited) radicalisation over migration issues, which led to a number of statements by Conservative politicians that could be interpreted as challenging the Single Market's fundamental principle of free movement of people.

16. All in all, the Bloomberg speech failed to depoliticise the future of UK-EU relations and the issue was bound to loom very large in 2015 election campaign. National Reform Programme and Country Specific Recommendations

III. Scenarios for the 2015 election

17. As of December 2014, the polls were extremely close, with Labour usually enjoying the smallest of leads, and the outcome of the May election was largely unpredictable.⁹ Unless there was a significant surge in support for Labour (who tended in the past to be favoured by electoral geography but now are faced with the prospect of having all but a few of their Scottish seats taken over by the Scottish nationalists), it was unlikely that any party should win an outright majority in the House of Commons, so the country is faced with the prospect of a minority or (again) a coalition government in a hung parliament.

In turn, we are now going to examine the likely impact of Conservative and Labour victories on UK-EU relations and the referendum prospects.

⁸ *The Guardian*, David Cameron prepares to fight Brussels' £1.7bn demand, 27 October 2014, <http://www.theguardian.com/world/2014/oct/27/david-cameron-fight-brussels-demand> (accessed 22 December 2014).

⁹ For data and analysis, consult <http://ukpollingreport.co.uk/>.

Conservative victory

18. A Conservative victory is likely to trigger the Bloomberg scenario, with an attempt to re-negotiate the terms of British EU membership and a (probably) 2017 referendum on continued membership/withdrawal.

Much would depend on the post-election political constellation. An unlikely scenario of a majority single-party government (the Conservatives would need to score close to 40 per cent of vote, some 8 per cent above their current polls) would return a much strengthened David Cameron as Prime Minister with a mandate to carry through his renegotiation-referendum plan.

As long as Cameron remains committed to continued British membership of the EU and there remains goodwill among the rest of the EU, there should be scope for a redefinition of UK-EU relations in a way that will enable Cameron to make a full-hearted case for continued EU membership. It should be noted though that the (already thinning) goodwill among EU partners will not be indefinite, and to maintain it Cameron will absolutely have to refrain from taking irreversible steps prior to the 2015 elections, especially as concerns free movement of people.¹⁰ If the negotiated concessions are more than just symbolic, Cameron should be able to keep most of his party on board, with the Conservative government thus joining Labour and others in campaigning against withdrawal.

The size of dissent among the Conservatives to such policy and the number of potential defectors to UKIP is difficult to predict, but on the whole this appears as the best scenario in terms of securing continued membership.

19. Some of the specific demands a Conservative government would raise for the renegotiation exercise will probably be listed in the party manifesto for the 2015 elections. Cameron's intention was to derive the list of British demands from the findings of the Balance of Competences Review; however, two difficulties have arisen.

¹⁰ *EUobserver.com*, Merkel: UK exit better than restricting free movement, 3 November 2014, <http://euobserver.com/justice/126351> (accessed 22 December 2014).



Firstly, though conceived as an impartial consultation, the Review may not be taken seriously enough by the European partners.¹¹ Second, the Review found the existing balance of competences as broadly right, not providing enough evidence of a need to negotiate a new UK-EU settlement. Evidence of benefits to the UK from the free movement of people even prompted the Tory-led Home Office (ministry of interior), intent on tightening migration controls, to delay the publication of the respective chapter of the Review.¹²

20. A Conservative victory without an outright majority may lead to a forming of a fragile coalition government – possible partners include the (presumably heavily weakened) Liberal Democrats or the UKIP – or a minority government relying on a supply of votes from either of the two parties. The LibDems would not prop up a government openly seeking withdrawal. The UKIP, on the other hand, would insist on a referendum and (at a minimum) the liberty to campaign for withdrawal.

If UKIP becomes, post-2015, the main partner of the Conservatives, the most likely scenario is renegotiation, referendum – and an openly divided Conservative Party, with (a much weaker) Cameron and the most senior Tories campaigning for withdrawal should the renegotiation exercise fail, or continued membership if renegotiation can be presented as a success. The influence of a Conservative-leaning daily press would skyrocket. In either case, the Conservative Party would sustain heavy, long-term damage.

¹¹ *The Guardian*, David Cameron snubbed as Germany and France ignore UK survey on Europe, 1 April 2014, <http://www.theguardian.com/politics/2013/apr/01/david-cameron-eu-survey-merkel> (accessed 22 December 2014).

¹² *FT.com*, Studies by Whitehall see UK benefits in Europe, 12 February 2014, <http://www.ft.com/intl/cms/s/0/7b4fb994-9409-11e3-a0e1-00144feab7de.html#axzz3MesBvwpR> (accessed 22 December 2014); *Daily Mail*, Britain is not rushing for the EU exit door, Cabinet minister insists as government study says most Brussels rules are fine, 13 February 2014, <http://www.dailymail.co.uk/news/article-2558480/Britain-not-rushing-EU-exit-door-Cabinet-minister-insists-government-study-says-Brussels-rules-fine.html> (accessed 22 December 2014).

Labour victory

21. Any Labour or Labour-led government (majority; coalition with LibDems or/and the Scottish Nationalists, minority government with supply from the abovementioned parties and/or the Greens, the Welsh Nationalists et al., a broad “anti-Tory/UKIP” coalition conceivable even in the case of a narrow Conservative victory) would put the referendum plans on hold as both Labour and LibDems have pegged the referendum to a treaty change.

Meanwhile, other EU member states may decide to press for a formal revision of the Lisbon Treaty. This could actually lead to a somewhat paradoxical scenario: Ed Miliband, the presumed Labour Prime Minister, seeks to avoid the need to call a referendum under the European Union Act. The rest of the EU is more accommodating with a less confrontational British partner committed to salvaging EU membership. In the event, the UK under Miliband is granted chunks of what David Cameron would have asked under the “renegotiation” banner.

22. There is, however, a big caveat to this scenario. Failure to form a government after the 2015 elections will almost certainly lead to the selection of a new Conservative leader. Regardless of whether David Cameron’s successor himself/herself hails from the pragmatic or the Eurosceptic wing of the party, the Conservative Opposition will sharply criticise the government’s European policy, insist on calling the referendum and fight the next electoral campaign on a radicalised manifesto. The new Conservative party leadership may feel obliged to shift their line on EU membership – probably to a sufficiently vague “withdrawal unless there is a fundamental revision of the terms of British membership” in order to stave off a wave of defections to the thriving UKIP.

23. Thus, upon the Conservatives’ return to government (under the terms of the 2011 Fixed – term Parliaments Act, the next general election should take place in 2020) there looms again the referendum. With the Tories having meanwhile slid further to the “withdrawal” pole of the debate (not least as they will either have won back part of the Eurosceptic UKIP vote at this election or formed a Conservative/UKIP bloc), this time the two main



parties might be pitted against each other (and the debate/campaign, correspondingly, much more radicalised).

IV. Containing the risk of the Brexit

24. The EU cannot by itself prevent the Brexit from happening. The decision to remain part of or withdraw from the EU will rest with the sovereign UK Parliament and the British people, deciding in a referendum. However, much will also depend on how the EU, and Britain's continental partners, handle the issue both on the substantial and symbolic level, of what they say and do – and what they say and do not.

Before the 2015 elections

25. There appears little the EU can do prior to the UK general election, apart from refraining from steps (and statements) that would further complicate subsequent negotiations should a pro-referendum government be elected. This especially means avoiding further alienating the more pragmatic quarters of the Conservative Party (and, of course, the Eurosceptic media, which would then eagerly work to increase the salience of “Europe” in the election campaign). There are still many Conservative MPs, supported by the influential former party treasurer Lord Ashcroft, who argue that the electoral message of the party should focus on economy and services, not Europe and immigration. The EU should not undermine the position of these moderates in the debate on Conservative electoral strategy by helping bring the conflicting issues in UK-EU relations to the fore.

26. So the EU spokespersons should realise that strong statements from the Conservative leaders will inevitably abound in the pre-election heat and refrain, where possible, from trying to rebuff them openly. When communication hitches, the British Conservative member of European Commission, Lord Hill – former member of David Cameron's cabinet – could become a vital link, in addition to the permanent UK Representation in Brussels.

27. Signalling *a-priori* readiness to meaningfully revisit British terms of membership (while insisting on the integrity of the Single Market) could help shore up Cameron's line against Eurosceptic

pressure and prevent a further shift of the mean opinion in the Conservative Party towards withdrawal.

After the election – if a Labour/Labour-led government is elected

28. Formation of a government not committed to holding a referendum on UK membership of the EU means one thing only: (an unknown amount) of extra *time*, during which the EU can increase the likelihood of a pro-membership outcome of any future referendum, by:

1) getting its *economy* in a better, more sustainable shape. The proponents of withdrawal conjure a picture of overregulated, stagnating and debt-laden Eurozone as a costly drag on British prosperity, and such an image will be difficult to counter without real economic recovery on the continent. Moreover, unless there is a stable growth in demand in European markets, this will not only reduce the growth of British economy, but also speed up the decline of Europe's share as UK export market, thus validating the Eurosceptics' claim about decreasing the economic importance of Europe for Britain.¹³

2) realising that avoiding a 2017 referendum does not mean that there will not be one in the following parliament – and that accelerated differentiated integration in the Eurozone will eventually necessitate clarification of UK-EU relations, in one form or another. There are going to be issues that will worry any British government irrespective of its political hue, and the EU would be well advised to settle them while a more constructive, less domestically constrained partner is available.

29. Given British sensitivities about the scope of competence of the EU Court of Justice, it would certainly be more tactical to sort out issues like UK status vis-a-vis financial regulation, financial transaction tax, etc. via inter-governmental accord (e.g. protocols) than through EUCJ judicature.

After the election – if a Conservative/Conservative-led government is elected

¹³ See Simon Tilford's paper at <http://www.cer.org.uk/insights/does-eurozone-slump-make-brexit-more-likely>.



30. As we have seen earlier, there are still too many unknowns regarding the composition of the new Tory/Tory-led government (presumably led again by David Cameron), the balance of opinions in the 2015 Parliament, as well as the extent and specific character of issues the British government would ask to renegotiate (note that the Bloomberg speech is long on policy-related ideas but rather short on policy items). In general terms, therefore, the EU could be advised to:

31. Insist, as during the 1974-5 renegotiation, that while the renegotiation process takes place, the UK fully exercises its membership rights and observes its actual obligations, even in areas subject to renegotiation. This should help to bind the new UK government deeper in the daily community business, socialise new ministers and hopefully prevent the “us-them” mentality, which will inevitably accompany the renegotiation, from becoming a defining feature of the UK-EU relationship.

32. On the substance level, there are several policy areas of high importance for the UK where the EU could consider granting concessions to London without turning the Single Market into a fundamentally uneven playing field:

► Social and employment legislation: here the scope for a “special regime” is rather limited, but the UK could be granted a permanent full suspension from the Working time directive, its long-term worry.

► Free movement of people: the principle itself must remain sacrosanct; however, given the resonance of current fears of “benefit tourism”, EU member states should be allowed to interpret, within clear limits, its welfare implications more restrictively. The issue might decrease in prominence once (and if) economic recovery takes firm roots.

► Agriculture and fisheries: again, these are long-term issues for the British. It is difficult to envisage any sort of formal opt-out from the CAP (possibly less so from the CFP). Yet partial renationalisation – even symbolic – of agricultural support, however unpopular with some member states, would be a very strong argument for the pro-membership camp: not only would it imply a long-desired correction of the volume and structure of EU expenditure but it

would also reinforce in British eyes the perception of the EU “moving in the right direction”.

► The EU could reconsider its current proposal of the Financial Transactions tax that is to be introduced under the enhanced co-operation formula. It raises fundamental issues about territoriality and integrity of the Single Market and has been repeatedly challenged by the UK.

► Guarantees of current special regimes in the areas of criminal law and police co-operation, and budgetary contributions (current formula of the “rebate”) should be spelled out clearly.

33. Symbolic politics will matter. On that level, the UK needs to be reassured that the EU will do all that is in its powers to prevent the ongoing Eurozone-based economic and political integration from turning out as discriminatory against non-Eurozone members in terms of Single Market (including, explicitly, financial services) access and decision-making. A “statement of fairness”, though just declaratory, could be useful here.

One of the few specific points raised by Cameron in his Bloomberg speech, the “ever closer union”, as a goal of the integration process stated in the preamble of the TEU, really does not and will not apply for all EU member states. The EU should be able to find a way for the UK to distance itself from this particular commitment whilst respecting that wish on the part of the others.

34. Of course, the overarching message conveyed to the UK should be: “We do want you in: both Britain and the EU benefit from the British membership of the Union, economically¹⁴ and politically”. To bolster the economic argument, the EU should cultivate links, through access and responsiveness, among actors that are likely to support the pro-membership campaign: the businesses and the City.

¹⁴ Economic and economy-related arguments for membership are outlined e.g. in an extensive report by the London-based Centre for European Reform, available at http://www.cer.org.uk/sites/default/files/smc_final_report_june2014.pdf.