



# REPORT

THE POLISH INSTITUTE OF INTERNATIONAL AFFAIRS

## THE RENEGOTIATION DELUSION? NINE QUESTIONS ABOUT BRITAIN'S EU FUTURE

WARSAW  
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Agata Gostyńska, Roderick Parkes, Marta Stormowska,  
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## Executive Summary

- Prime Minister David Cameron's 23 January speech about the UK's relationship to the European Union has added further uncertainty to the EU's efforts to resolve the eurozone crisis, and has created tensions between the UK, which demands to be treated as an equal partner in EU decisions, and other Member States, which do not know the UK's long-term intentions.
- The speech also raises questions for the UK's traditional allies in the EU. They share many of the concerns raised by Cameron about economic competitiveness and democracy, but they also perceive that the UK's path is a unilateral one and that by isolating himself in Europe the leader of the Conservatives has just set back the cause of EU reform.
- Uncertainty about the UK's relationship to the European Union affects Poland particularly badly. Whilst the time for close partnership between the two countries on EU issues such as defence, economic reform and further eastern and southeastern enlargement may have passed, Warsaw is directly affected by the politicisation of the insider/outsider question in European affairs.
- The creation of a special new status for the UK could, for instance, set a precedent to be extended to non-Member States, undermining Polish efforts to prevent a dilution of the EU enlargement agenda. More worrying, the question of decision-making and participation rights in policy areas to which not all Member States are party may further politicise Poland's relationship to the eurozone.
- Member States would be wrong to assume that the situation will simply resolve itself if, as seems likely, the Conservatives lose the next general election, or because the alternatives to full EU membership are economically unfeasible for the UK. The British electorate is unhappy with the EU and its desire to express that unhappiness has passed the tipping point.
- Warsaw's goal should be to resolve the issue in as integrative a manner as possible. This means encouraging EU institutions to help provide an objective basis for the UK's domestic debate about EU reform, not least through the government's ongoing balance of competencies review, and to ensure that any useful lessons subsequently feed back into EU-level policymaking.
- If it comes to a repatriation of powers or establishing a new membership category, Warsaw should outline a concept of EU integration that sets out the possibilities and limitations for such a move. This will prevent the reversal of key policies such as the free movement of labour, a general trend towards unilateral renegotiation by other Member States, and ongoing tensions between the UK and its EU partners.





## Introduction

When he sketched out his vision of the UK's role in the future European Union,<sup>1</sup> David Cameron caused Europe-wide confusion. Ever since, British diplomats have been furiously arguing that the January 23<sup>rd</sup> speech had a straightforward and unambiguous purpose—to highlight to European partners the necessity of reforms to enable Europe to better address the globalised world. Cameron repeated the effort with a recent bulk interview given to French, German, Spanish, Italian and Polish daily newspapers,<sup>2</sup> again to little effect. Vague calls to improve economic competitiveness, introduce more flexibility to the integration process, better safeguard the subsidiarity principle, upgrade national parliaments' involvement in the decision-making process and, finally, make the eurozone more open and transparent to non-euro Member States rather fade in the light of Cameron's pledge to renegotiate British membership of the EU and to present the results to the electorate in an "in-out" referendum by 2018, should his party be returned to government in 2015.

Cameron's speech succeeded only in making clear the shift in British politics since the prime minister took over stewardship of his party in December 2005.<sup>3</sup> During that time, continental Europeans have watched as the Conservatives left the European People's Party in the European Parliament, supported the adoption of a European Union Act that binds the UK to hold a referendum in case of a further transfer of competencies towards Brussels,<sup>4</sup> abstained from the treaty revision on the coordination of Member States' fiscal policies in December 2011 and finally announced that UK membership of the EU would have to be renegotiated. And even that clarity was short lived: the January speech increased the uncertainty about how the political shift will play out. While some Conservative backbenchers, and even ministers, have urged the prime minister to break the Gordian knot of Britain's uncomfortable relationship with the European Union, the fundamental renegotiation of its membership terms or even a divorce would be a highly complicated exercise.<sup>5</sup>

The last and only referendum on the UK's EU membership was held in 1975, just two years after the country's accession. Labour Prime Minister Harold Wilson led a campaign in favour of remaining, but due to divisions in his party about membership of this economically liberal bloc, some of his ministers supported withdrawal. Despite eight months of domination by the "no" option in the polls, when it came to the crunch 67% of votes were in favour of staying. The referendum was preceded by renegotiations, based on the Labour Party Manifesto from 1974, and the government claimed that it had succeeded in almost all its priorities.<sup>6</sup> However, in four out of seven areas of interest, there were no changes at all, and in many cases the government found itself satisfied with provisions already stipulated in the Treaty and clarified following consultations with the Commission. No subsequent treaty change was required.

This light manoeuvre clearly failed to settle the membership question once and for all, and forty years later it is the Conservative Party that is most uneasy about Britain's relationship

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<sup>1</sup> D. Cameron, "British Prime Minister's Speech at Bloomberg", 23 January 2013, [www.number10.gov.uk](http://www.number10.gov.uk).

<sup>2</sup> See, "Cameron: Europa tak, ale zreformowana" ("Cameron: Europe yes, but reformed"), interview with the British prime minister, D. Cameron, *Gazeta Wyborcza*, 8 April 2013, [www.wyborcza.pl](http://www.wyborcza.pl).

<sup>3</sup> A. Teasdale, "On the outside looking in: the fate of Britain in Europe", in: "Europe in search of a new settlement. EU-UK relations and the politics of integration", *Policy Network Report*, February 2013, p.18.

<sup>4</sup> European Union Act 2011, [www.legislation.gov.uk](http://www.legislation.gov.uk).

<sup>5</sup> Speech by President of the European Council Herman Van Rompuy at the annual conference of the Policy Network, "Britain in Europe: channelling change together", Guildhall, City of London, 28 February, 2013, [www.policy-network.net](http://www.policy-network.net).

<sup>6</sup> White Paper on the outcomes of renegotiations of the initial conditions for the UK's accession to the EEC (March 1975), [www.cvce.eu](http://www.cvce.eu).

with the EU. The party has long been frustrated by the dilution of the EU's liberal focus ("Social Europe") and more recently about the way European integration seems to have turned the European Union from economic opportunity to liability. Many other EU governments have, however, been spurred by the global financial crisis to engage in strategic planning exercises, and the long-term future of the UK's relationship with the EU features increasingly high on their agendas. For their part, they are showing signs of frustration at the continued lack of clarity from London and its continued demands to be treated as a normal partner in the EU's long-term decisions. This paper explores the question whether the 27—soon to be 28—will be able to resolve the situation to their mutual satisfaction, assuming that all have an interest in tying the UK closely to the EU, but not in such a way that it seriously disrupts cooperation.

Three avenues are explored: first, since the dynamics of this issue are in large part down to party politics, the paper asks how the domestic political context in the UK will play out; second, given the centrality of the economic question to the government's position, how British business itself views the prospect of a renegotiation and referendum; and, third, whether the political and legal-institutional framework at the EU level is conducive to mutual compromise.

## The Domestic Context

What David Cameron proposed for Europe emerged from the domestic context. Whilst his speech echoed the UK's eurosceptic public debate in which there is a large degree of popular support for the idea of an in/out referendum, it should be noted that in opinion polls testing voters' broader priorities, the EU issue does not feature heavily. This suggests that his motives were specifically party-political. This was not the speech of a prime minister answering the demands of public opinion in general, but of a party leader preparing for a tight general election due to be held in May 2015 in which the significance of the small eurosceptic party, UKIP, has been hugely magnified by an unusual political constellation. It describes a vision of Europe gripping a party leader who pursued a moderate electoral line in 2010 and failed to win an outright majority, and certainly one that does not correspond with the coalition government programme set out together with the Liberal Democrats.<sup>7</sup>

What do the Conservatives actually want?

When the UK entered the EU in 1973, the Labour Party was broadly opposed, and the Conservatives in favour. Of course, both of the UK's major parties viewed entry as at best an unfortunate necessity, conditioned by the loss of British influence in the world, but traditional left/right differences made the notion more palatable to the one than the other. The past 40 years have seen a gradual change in attitudes on both sides as the EU itself has changed. In particular, the launch of the Social Europe agenda by Jacques Delors appealed to the Labour Party, just as it alienated the Conservatives. The gradual switch in positions by both parties—with Margaret Thatcher moving towards a Eurosceptic position, and Tony Blair marking out a pro-European one, each in the teeth of opposition from some of their MPs—means that the issue has long entailed party-disunity and government instability. Although Conservatives today show a greater degree of unity on the issue, it remains a question with the capacity to destabilise them.

For many Conservatives, the Single Market remains an argument to stay and engage—Cameron's refusal to countenance withdrawal from the EU and a status similar to Norway or Switzerland is founded on the argument that the UK has to secure its say there. Nevertheless, there are numerous sticking points for the party. Beyond the idea of an "ever closer" Union, and a dislike of European integration pursued *qua* integration, the Conservatives criticize certain common European policies. These include social regulations and agricultural and fisheries policy, which they associate with protectionism, and financial regulations which may have a negative impact on the City. The development of the eurozone in response to the crisis has also raised anxiety about the protection of the interests of non-euro Member States, and the Conservatives worry more about the health of the UK's financial sector than do Ed Miliband's Labour Party or indeed Nick Clegg's traditionally left-leaning Liberal Democrats.

By tying the party to an in/out referendum, Cameron has rather polarised opinion within the party. This is no longer a question of how best to engage in the EU on a daily basis and what kind of policy-based agenda to pursue, but about what to keep and abandon, whether to stay or go. The debates in both Houses of Parliament that followed Cameron's speech revealed how differently the question of renegotiation and referendum can be interpreted.<sup>8</sup> A determination not only to change the EU but to remain a Member State was underlined by several Conservatives in the upper house, notably Lord Hove of Aberavon and Lord Bowness. This was echoed in February when a small European Mainstream Group, gathering more pro-European

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<sup>7</sup> In the coalition programme there is no reference to membership renegotiations or a domestic referendum on the UK's membership in the EU during this term of parliament. See: "The Coalition: Our Programme for Government", 20 May 2010, [www.gov.uk](http://www.gov.uk).

<sup>8</sup> Transcripts from the debate in the House of Commons held on 30th January and a debate in the House of Lords held on 31st January, <http://www.publications.parliament.uk>.

Conservative MPs, was launched by Robert Buckland.<sup>9</sup> By contrast, other MPs did not hesitate to claim that if renegotiation objectives were not met, withdrawal should be an option. That was in turn a stance that was clearly avoided by Cameron himself, who simply refused to comment when asked to do so by the Leader of the Opposition during Prime Minister's Questions.<sup>10</sup>

All this means that the Conservative Party has no set renegotiation agenda. According to Cameron's speech, the next Conservative Party Manifesto will lay down the objectives for talks, and the party has no very clear idea of its goals today. At this stage, then, it would be highly speculative to draw any firm assumptions about what could constitute a negotiating mandate. The official Review of the Balance of Competences, launched by the coalition government in July 2012, constitutes an obvious starting point for formulating the British "wish-list". With this exercise, which is to be consulted with the UK Parliament, business, and civil society, the coalition government is examining the full EU catalogue of competencies to get a better, more objective picture of how the national interest is affected by the EU. It is specified, however, that the review should not aim to draw any policy recommendations and does not prejudice any further steps in terms of British membership renegotiation.

It is far more likely that some ideas put forward by the Fresh Start Project will be considered by a future Conservative government.<sup>11</sup> This initiative, which was formed in 2011 by first-time Conservative MPs Chris Heaton-Harris, George Eustice and likely future minister Andrea Leadsom,<sup>12</sup> advocates a renegotiation of British membership while remaining in the European Union. Just ahead of Cameron's speech, the initiative launched its manifesto.<sup>13</sup> From the quite complex proposals ranging from social and employment law, through policing and criminal justice to agriculture, fisheries and energy policy, the financial services sector (which represents as much as 10% of UK GDP) is really at the centre of attention. The outcome of the Ecofin meeting on 5 March 2013, which largely endorsed the results of the negotiations with the European Parliament on bankers' bonuses,<sup>14</sup> might only reinforce the group's idea of asserting an emergency brake on financial proposals that are perceived by the UK as interfering in the City's interests.<sup>15</sup>

### Is the referendum more than just a Conservative campaign tool?

If Cameron has taken the step of pledging renegotiation and referendum, it is primarily in order to appeal to his backbenchers. Given the fact that the party has no majority in parliament, the backbenchers have an unusual degree of influence. These comprise a large cohort of new MPs, elected for the first time in 2010, and for whom the EU is a growing irritant. They were not involved in the bitter ideological battles of the Maastricht Treaty era and initially considered themselves dispassionate about the EU. They have been quickly disappointed by the realities of

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<sup>9</sup> See also: Benjamin Fox, "An outbreak of Tory moderation on Europe or just wishful thinking?", [blogs.euobserver.com](http://blogs.euobserver.com), 27 February 2013.

<sup>10</sup> Transcript from Prime Minister's Questions (PMQ), 23rd January, [www.publications.parliament.uk](http://www.publications.parliament.uk).

<sup>11</sup> Fresh Start Project, "Manifesto for Change. A new Vision for the UK in Europe", January 2013, [www.eufreshstart.org](http://www.eufreshstart.org).

<sup>12</sup> M. Barrett, "What is the Fresh Start Project? Matthew Barrett profiles the Tory MPs trying to forge a new UK-EU relationship", 28 May 2013, <http://conservativehome.blogs.com>.

<sup>13</sup> Fresh Start Project, *op. cit.*

<sup>14</sup> Press Release, "3227th Council Meeting, Economic and Financial Affairs", Brussels, 5 March 2013, doc. no 6962/13, provisional version, [www.consilium.europa.eu](http://www.consilium.europa.eu).

<sup>15</sup> Fresh Start Project, *op. cit.* Some could argue that the Council compromise on voting in the European Banking Authority, which would require a majority of Member States participating in the Single Supervisory Mechanism as well as a majority of non-participating states (including the UK), to map out the current degree of willingness to accommodate British interests and thus serve as a favourable precedent enhancing the UK's position in the negotiations with European partners. However, the so called bankers' bonuses case, in which the UK seemed to have been isolated, leaves a rather mixed picture of its current bargaining power in the European Union.

Brussels politics and the difficulties of “reforming the EU”. Given the UK’s domestic economic difficulties, they advocate national reforms to tax and social laws, and have been frustrated at the clash with EU norms. Recent scandals on parliamentary expenses and MPs’ relationship with the media have also strengthened their desire to reassert the legislature’s standing and to overcome the limits posed on the principle of parliamentary sovereignty by the EU. Moreover, their unwanted marriage to the still relatively pro-European Liberal Democrats has made the EU a regular point of tension in the business of governing the country.

In October 2011, when MPs voted on an initiative to hold a referendum on EU membership that had been submitted not by the government but by 100,000 members of the public, the leader of the Conservative Party experienced one of the most serious backbench rebellions in the UK’s recent history.<sup>16</sup> The official government line was to turn down the proposition, with the prime minister arguing that this was no time for a referendum, as the eurozone crisis needed resolving first. However, in defiance of a three-line whip, one of the strongest measures available to the party leadership to discipline its members, 81 Conservatives voted for the proposal. Although the motion was defeated, in June 2012 100 Conservatives came with a more moderate proposition, signing a letter urging Cameron to commit his party to hold a referendum after the next general election.<sup>17</sup> That was exactly the promise Cameron made in his speech. The referendum would be held in 2017 under two conditions—first, if the party was in power after the next general election (most recent commentaries add the further caveat that the Conservatives achieve a single-party government<sup>18</sup>), and second, that it would follow renegotiations towards a “better deal” for the UK and the EU.

It is above all the prospect of the 2015 general election that most worries these MPs. Following a series of lost general elections where the party pursued a rather right-wing line on issues such as the EU, law and order, the economy and climate, Cameron fought the last general election with a more mainstream approach. Whilst this helped the Conservatives beat the Labour Party, it did not deliver them an outright majority. MPs are therefore asking whether the centre ground will bring them victory in the 2015 poll, and EU issues are key to their calculations. They worry how to appease their local Conservative Party associations, which tend to be highly eurosceptic. They worry how best to push the Liberal Democrat Party to the Left, so that it competes with the Labour Party. And they worry above all about the threat from the UK Independence Party, although the party does not at present have a seat in parliament.<sup>19</sup> In the Eastleigh by-election held on 28<sup>th</sup> February 2013, the UKIP candidate came second to the Liberals and received more votes than the Conservatives, a considerable blow to the Tories. In local elections held on 2 May UKIP won over 140 seats and received 23% of all votes.<sup>20</sup> The main reasons for voting for UKIP were given as a desire to “reduce migration and leave the EU”.<sup>21</sup>

After the Eastleigh by-election, UK-wide polls registered support for UKIP at a highest level, with 12%, compared to 8% on average during the last 10 months. This right-wing party, based on hostile euroscepticism and an anti-migration stance will inevitably be a serious feature to consider in Conservative election strategy, which itself is likely to take a more populist and scrappy line with the hiring of electoral strategist Lynton Crosby. Sixty percent of the voters who declare support for UKIP voted Conservative in the last general election,<sup>22</sup> and UKIP’s position could well be strengthened by

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<sup>16</sup> “Europe referendum: Rebels lose vote in commons”, BBC news, 25 October 2011, [www.bbc.co.uk](http://www.bbc.co.uk).

<sup>17</sup> John Baron MP, Press Releases, <http://pressreleases.johnbaron.co.uk/archives/1285>.

<sup>18</sup> “Cameron: No EU referendum without Tory majority”, [politics.co.uk](http://politics.co.uk), 21 February 2013.

<sup>19</sup> It should be noted, however, that those Conservative MPs most at risk of losing their seats are nervous about mentioning the EU issue. This reflects both a general desire to tread carefully and a sense that the question should not be broached until the party has a clear plan about how to resolve it.

<sup>20</sup> “Local elections: Nigel Farage hails result as a ‘game changer’”, 3 May 2013, [www.bbc.co.uk](http://www.bbc.co.uk).

<sup>21</sup> “Immigration and Europe key to UKIP success”, 3 May 2013, [www.yougov.co.uk](http://www.yougov.co.uk).

<sup>22</sup> YouGov survey, “How UKIP voters compare”, 5 March 2013, <http://yougov.co.uk/news/2013/03/05/analysis-ukip-voters>.



the European Parliament elections in 2014. Back in the 2009 European elections, UKIP was the second party and its current leader Nigel Farage was returned as an MEP. Recent polling suggested UKIP would gain 17% of votes in upcoming elections.<sup>23</sup> Success in 2014 could boost its results in the general election, and support for this protest party may be more than enough to get votes from the Tories and create a winning margin for Labour. From this point of view, Cameron's speech must be seen as a step to diminish UKIP's performance by showing voters that the Conservative Party has the vision and determination to handle UK-EU relations.

The strategy is, however, risky precisely because, despite the broad social discontent with EU relations, it involves giving up the centre ground. With UKIP wishing to challenge a wide range of parliamentary seats in 2015, rather than targeting only those where the Conservative candidate is deemed too pro-European, both parties will be competing for a relatively small pool of support. Support for the idea of a referendum is admittedly broad, at around 59% in recent polls.<sup>24</sup> This is accompanied by the highest levels of euroscepticism in the EU—only 33% of respondents in the UK claimed that their country had, on balance, benefited from being an EU Member State.<sup>25</sup> Moreover, almost every poll conducted in recent months indicated that a majority would be in favour of leaving the EU should an in/out referendum be held. Yet, whilst UK-EU relations are an issue that enjoys media attention and resonates with public opinion, they are by no means the most important preoccupation of voters. If asked to assess the significance of several areas of politics, voters are far more concerned about economy, immigration and health.<sup>26</sup>

That might be the reason why a three-point bump in Conservative support after the speech did not last long and why current poll results for Tories oscillate around the one-year average.<sup>27</sup> It should also be pointed out that British voters prize government stability—the first-past-the-post voting system has traditionally produced governments with strong majorities. EU issues are associated with instability and contributed to the downfall of the last two Conservative prime ministers, Margaret Thatcher and John Major. Although the prime minister's speech appeared to have assuaged his backbenchers and stabilised the party, it is not clear whether this will hold. The issue has created a further wedge between the Conservatives and their Liberal partners. Moreover, there have been signs of disagreement in the face of UKIP pressure<sup>28</sup>—intensified by UKIP's strong showing in the May local elections. In the aftermath of that poll, the right wing of the party called for an early referendum designed to give the prime minister a robust mandate to renegotiate the UK's EU membership. The idea was quickly quashed, but it all raises the question whether, as many commentators are speculating, a Conservative loss in two years time would simply see the situation resolve itself.

### Would a referendum occur even without a Conservative victory in 2015?

The announcement that renegotiation, followed by an in/out referendum will be part of the Conservatives' next manifesto put both Nick Clegg, leader of the Liberal Democrats, and Ed Miliband, leader of the Opposition Labour Party in an uncomfortable position. When the EU's Constitutional Treaty was undergoing ratification, an initial commitment to hold a referendum by one of the parties was quickly matched by the others, including the pro-European Liberals, who accepted it as a means to settle the question of the UK's EU relations. They are today under

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<sup>23</sup> *Ibidem*.

<sup>24</sup> *Ibidem*.

<sup>25</sup> D. Debomy, "Do Europeans still believe in the EU?", *Notre Europe Report*, June 2012, [http://www.notre-europe.eu/media/PublicOpinionEU1985-2011\\_D.Debomy\\_NE\\_June2012\\_01.pdf](http://www.notre-europe.eu/media/PublicOpinionEU1985-2011_D.Debomy_NE_June2012_01.pdf).

<sup>26</sup> YouGov, *op. cit*.

<sup>27</sup> For commentary on the polls, see, for instance: P. Kellner, "Cameron's nightmare" and "A bounce—of sorts", YouGov, [www.yougov.co.uk](http://www.yougov.co.uk).

<sup>28</sup> *Ibidem*.

similar pressure. Of course, if the two parties include a referendum commitment in their 2015 manifestos it might be seen as a sign of weakness and evidence of the lack of their own agenda. However, denying the necessity of a referendum exposes them to accusations of being un-democratic and having no trust in the public's judgement. As the issue is of great political potential, it is likely to cause friction within both parties very similar to those observed in the Conservative Party before the referendum was announced.

Very soon after the speech, however, criticism was heard from the Liberal Democrat Clegg. He underlined that the announcement of protracted negotiations and a referendum creates uncertainty that might cause serious damage to an economy that still struggles to recover. As for Miliband, for the time being, he does not envisage an "in/out" referendum but has left the option open. The Labour stance on the issue is rather "not now" than "not ever". But sitting on the fence is always difficult, and the Labour leader is likely to face pressure not only from the Conservatives but also from his own ranks. In the October 2011 parliamentary vote on the popular initiative for a referendum, 19 Labour MPs acted against the official party line and backed the motion. Of course, Miliband does have an emergency exit if at some point of the campaign he is forced to take a more pro-referendum stand. Just before Cameron's January speech, Miliband said that Labour would not repeal the 2011 European Union Act. The Act creates a "referendum lock" in case of any future transfer of powers to the EU.<sup>29</sup> Therefore, with no change in his real obligations, Miliband could claim he himself is committed to a referendum in case of any major treaty revision.

It will, however, be difficult for the Labour leader to confine the referendum to the narrow question of the transfer of new powers to the EU and to keep the broader membership question off the table. In polling following the January speech, 22% felt that a referendum should take place regardless of renegotiation,<sup>30</sup> and there was even broader support for the idea of renegotiation followed by referendum. Thus, the unequivocal victory of the Tories in the next parliamentary elections is no longer the major condition triggering a referendum, or potentially, membership renegotiations, and, in the most radical scenario, the use of the withdrawal clause included in the Lisbon Treaty.

### The Economic Context

The European Union is still viewed in the United Kingdom primarily as an economic bloc, and David Cameron has consistently cited an economic rationale to support his calls for reform, renegotiation and referendum. In the context of a deep economic crisis, not just in the eurozone but also at home, the opinion of British business leaders matters. Chancellor George Osborne believes that his economic agenda is taking positive effect and, echoing former Conservative Chancellor Norman Lamont, privately suggests that the green shoots of recovery are already emerging. He is, however, subject to regular criticism from both Labour MPs who object to his strong focus on austerity and Conservatives who believe that he has antagonised the electorate with his constant talk of austerity without actually following through. As in the late 1990s, the question of economic competence is defining politics, and the tolerance of the private sector for any government actions in Brussels will be a key variable in the UK's efforts to renegotiate relations with the EU.

What tolerance for economic uncertainty?

Today, it is difficult to gauge how supportive the British private sector will be for renegotiation. So far, it has played a rather muted role in the debate. Business opinions, it seems, are contradictory. There is no clear consensus about the likely or even desirable outcome of this process, even if many top managers downplay the likelihood of British exit. This is compounded by the fact that the time perspective of renegotiation is too distant for many businesses to take into

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<sup>29</sup> *European Union Act 2011*, [www.legislation.gov.uk](http://www.legislation.gov.uk).

<sup>30</sup> *You Gov*, *op. cit.*

account. This is particularly true of the financial sector, which generates a large part of British GDP and has a major influence on British politics. Finally, of course, the business sector understands its centrality to the process. Business leaders expect that, if renegotiation goes ahead, it is unlikely that the government will pursue a settlement harmful to business. More likely, it would concern minor issues with limited implications for business conditions.

Insofar as business leaders have expressed an opinion, they typically state the case for an improvement of the EU's support for business and to warn that an exit would be a negative development. In an open letter published in the *Financial Times*, business leaders supported the case for the single-market and EU budget reforms but expressed a negative opinion of a possible British exit: "To call for such a move in these circumstances would be to put our membership of the EU at risk and create damaging uncertainty for British business".<sup>31</sup> The letter was signed by Richard Branson (Virgin Group), Chris Gibson-Smith (London Stock Exchange), Malcolm Sweeting (Clifford Chance), Michael Rake (British Telecom) and many others. A rather critical assessment came also from Lord Heseltine, the prime minister's adviser on growth and a relatively pro-European minister in the Thatcher government, who expressed his concern that Cameron's speech could start an uncontrollable process possibly leading to an exit.<sup>32</sup>

Business journals took a more critical line. The *Economist* stated that a British exit is increasingly possible and called it a "reckless gamble": Despite saving €9 billion on its EU budget contribution, a British exit could have negative effects on its car industry, trade and investment, so the costs could outweigh the gains.<sup>33</sup> The *Financial Times* put into question the idea of "repatriation and referendum", calling repatriation a "mirage" and a potential threat to the single market, whilst "referendum" was justified but illusory when taking into account the quick changes in the EU and the damaging uncertainty for business.<sup>34</sup> The plans of the British prime minister received a cold reception abroad, too. Cameron's speech took place one day before the World Economic Forum in Davos. The general belief was that the chance of the UK leaving the EU was minor, due to its serious economic consequences; nevertheless, business leaders were concerned by the relatively high dose of uncertainty, which can add to the UK's current economic problems.

Domestic business is also mobilising against drawn-out negotiations, underlining the dubious prospect of several years of uncertainty that could hamper inward investment (and potentially playing into the hands of other EU governments faced with an intransigent UK). They also express concern that the noisy debate about the UK's EU relations will distract public opinion from the problems of the British economy and its sluggish growth, widening the current-account deficit and high level of public and private debt. Yet, there are voices with a different tone, not least the 55 business leaders who published a letter in *The Times* supporting the European policy of the prime minister. Others pointed out that since the EU debate would anyway rumble on in the UK, this move provides a chance to resolve the issue. Significantly, the point of view of business leaders depended on the international locus of their business activities. Those with strong links outside the EU saw this as an opportunity for decreasing the regulatory burden and improving support for exports.<sup>35</sup>

Some business leaders thus applaud Cameron's emphasis on completing the single market and repatriating powers in the area of labour law, as it could bring better access to a

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<sup>31</sup> R. Rudd, R. Branson, et al., "Britain needs to lead in a strong, reformed EU", *Financial Times*, 9 January 2013; G. Parker, P. Spiegel, "Business Leaders warn Cameron on EU terms", *Financial Times*, 8 January 2013.

<sup>32</sup> G. Parker, B. Groom, "Cameron's Policy on Europe 'creates uncertainty'", *Financial Times*, 11 January 2013.

<sup>33</sup> "Goodbye Europe", *The Economist*, 8 December 2012; "The gambler", *The Economist*, 26 January 2013.

<sup>34</sup> J. Ganesh, "The Europe speech that David Cameron should give", *Financial Times*, 5/6 January 2013.

<sup>35</sup> "David Cameron's EU speech: The small business reaction", *Businesszone*, 23 January 2013, accessed at: [www.businesszone.co.uk/topic/finances/david-cameron-s-eu-speech-small-business-reaction/46878](http://www.businesszone.co.uk/topic/finances/david-cameron-s-eu-speech-small-business-reaction/46878).



flexible labour force. Yet, it is likely that business leaders have overestimated the UK's capacity to constructively reform the EU and to reshape the terms of its membership. Indeed, in all the opinions about UK-EU relations there is a striking lack of basic knowledge about EU mechanisms. There have, for instance, been some awkward suggestions that the UK can be a member of selected EU institutions such as the European Council, and abstain from the Commission or from the Council.<sup>36</sup> The expectations towards possible areas of renegotiation were also vague. If the UK chooses to renegotiate the terms of its membership, it has several options to choose from, and businesses are only just beginning to weigh up the options' economic viability.

### How economically desirable are the different options?

The possible benefits of renegotiation are relative to the status quo, which currently gives the UK full access to the single market in terms of the mobility of goods, labour, capital and services. The current membership settlement also places the UK within the bloc's external trade policy, including common tariffs and access to the growing range of EU-third country Free Trade Agreements. The UK can thus use the weight of EU membership as a means to increase its chances of success in foreign markets. This is boosted by other EU members' practice of re-exporting British products and exporting goods containing British semi-products to third countries. These benefits must be weighed against the net transfers paid by the UK to the EU via the common budget, which is estimated to amount in 2011 to 0.3% of the UK's GDP.<sup>37</sup> Under current arrangements, the UK also bears the burden of common EU regulations but receives access to the largest economic area in the world. Its privileged access to other EU members' markets also encourages a concentration of trade (imports as well as exports) in the EU/EEA, meaning the UK is exposed to the risk of demand contraction in the wake of regional developments.

Starting from the base scenario, the renegotiation might concern several issues important for the UK, most obviously the financial sector, internal market, Common Agricultural Policy and the EU budget. Ironically perhaps, such negotiations may turn out to be something of a red herring from an economic perspective—not least by enlarging the scope of derogations in the working time directive. Article 22 of the directive already provides ample exemptions from the most important rule of 48-hours working weeks' time.<sup>38</sup> This scope is exploited in the UK's transposition of the directive (the Working Time Regulation 1998) as well as by many other EU members. In fact, in the past there were doubts expressed by the Commission and the trade unions as to whether the workers' rights granted by the directive are actually executed at all.<sup>39</sup> Concerning the City's interests, meanwhile, during the negotiations over the regulations of the financial sector, the UK fought successfully for safeguards for the Member States, e.g., in micro-prudential supervision. The appointment of a British national to the key post of Director General for Internal Market and Services was a concession towards the UK to make it feel that its interests in this area were secured.

With the British electorate alive to any new solution that merely involves meaningless tinkering, however, the government may be pushed towards more radical solutions. Based on the existing examples of "close outsiders of the EU", one may consider a further range of variants of economic co-operation with the EU. Certain implications are common to each of them. These "exit scenarios", in their varying degrees, would entail a dip in the UK's leverage

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<sup>36</sup> N. Blackwell, "Britain can shape a new relationship with Europe", *Financial Times*, 07 January 2013.

<sup>37</sup> DG Budget and Financial Programming (compare: [http://ec.europa.eu/budget/financialreport/index\\_en.html](http://ec.europa.eu/budget/financialreport/index_en.html)).

<sup>38</sup> "Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time", *Official Journal of the European Union*, L 299/9.

<sup>39</sup> European Commission (2011), "Detailed report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time ("The Working Time Directive")", *Commission Staff Working Paper*, Brussels, 21 December 2010, p. 157.

over EU economic reform, preventing the country from altering a path towards euro stagnation, which would affect it even as it loosened its political ties with the euro area. Each of these scenarios also assumes deterioration in the attitude of EU consumers towards British goods and services as well as complications in cooperation between EU-British joint business ventures. This would imply an additional decline in trade and economic activities; however, this effect would be rather insignificant.

The first alternative is the “Norwegian scenario”, which assumes the UK stays in the European Economic Area (EEA), thus enjoying the four freedoms given by the single market but under more bureaucratic conditions. It is a scenario that eliminates the issue of contributions to the EU budget but entails other smaller payments to maintain the single market (equivalent to the present situation in which Norwegian grants are made, designed to accelerate the convergence process amongst the EU-12, a sum proportionate to 0.1% of its GDP). In the UK’s case, this would come to around €2 billion a year. In this scenario, products traded within the EEA should meet EU standards and are additionally bound by rules of origin<sup>40</sup> that were introduced to control where products originate and to limit their re-export. Added to this, the UK would need to launch time-consuming negotiations on FTAs and other agreements so as to limit trade barriers with third countries. Because of its participation in the single market, specific rules concerning the labour market are adapted. Still, some influence on the development of the single market is preserved. Hence, a considerable share of the EU regulations will still need to be implemented at the national level, and the UK will lose much of its capacity to alter them at the negotiating stage.

A second option entails joining EFTA but not participating in the EEA, as with Switzerland, which chose to limit integration solely to bilateral agreements.<sup>41</sup> This does not differ substantially from the first scenario, however certain important restrictions exist with regards to the free movement of services, and bilateral agreements would form relations with the EU Member States. This is crucial, for instance, in the case of the banking and financial sector where it may limit the UK’s access to the common market and diminish its influence on the further development of the regulatory framework of the banking union. This would be quite at odds with the UK’s current influence, and indeed has been ruled out by Cameron on this ground. Also, non-tariff measures (not only in terms of goods) may emerge, but this would depend on a decision of both the EU and UK. Due to more lax relations with the EU in this scenario, there is no need to apply EU law concerning the labour market or on issues such as limits on work weeks. Moreover, in this scenario, EU contributions would not exist at all, but it is probable that some money transfers would take place, as in the case of Switzerland, which aids new Member States under the Federal Act of 24 March 2006 in cooperation with Eastern Europe and the CIS, and via non-binding memorandums of understanding.<sup>42</sup> This in-kind MoU could be an interesting solution for Great Britain, but most likely the Member States would struggle to impose appropriate obligatory clauses in the context of financial contributions.

A third option is to link the UK with the EU only through a customs union, as is the case with Turkey. This solution entails a common external tariff with the EU enabling free movement of goods within the shared borders, and the possibility to negotiate regulatory divergence from EU customs duties and regulations under Article XXIV of GATT. Rules of origin are not applicable in this scenario,<sup>43</sup> which

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<sup>40</sup> There are two kinds of rules of origin: preferential and non-preferential. The first group generally entails lower or no tariffs or other non-tariff measures. As for the second group, if some component parts of a traded product are bound by the non-preferential rule of origin, these parts would incur regular duty for this product category.

<sup>41</sup> Switzerland, in a referendum, rejected entering the EEA despite the government taking part in negotiating the binding rules. Thus, this is a different case from Norway.

<sup>42</sup> “The Swiss contribution to EU enlargement towards the East”, FDFA (Switzerland), [www.contribution-enlargement.admin.ch/en/Home/The\\_Swiss\\_contribution](http://www.contribution-enlargement.admin.ch/en/Home/The_Swiss_contribution).

<sup>43</sup> S. Booth, C. Howarth, “Trading places: Is EU membership still the best option for UK trade?”, *Open Europe* (2012), London, p. 41; DG Trade: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/rules\\_origin/introduction/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/introduction/index_en.htm).

in terms of the exchange in goods would be more advantageous for the UK than the options of joining the EEA or EFTA because no additional tariffs charged on the traded products. Still, the UK would need to adopt EU law on the technical specifications of traded products and accommodate EU external trade policy. Additionally, other freedoms—capital, labour and services—were constrained. Hence, the UK would need to forge an agreement on capital flows, especially in case of foreign direct investments (FDIs) and the financial sector. Contrary to the other scenarios, the UK wouldn't pay any money for the functioning of the single market. Also, there is no need to apply EU law concerning the labour market.

Each option is *prima facie* inferior to staying in the EU. But this naturally depends on how well the UK converts its current membership rights into influence over the bloc's financial, labour market and economic rules. It also depends upon the resolution of the euro area debt crisis, since a drawn-out affair will drag down the EU's share of UK trade, from 52% of current British exports<sup>44</sup> and 44% of services. In light of a likely deterioration in the UK's EU position (and thus its leverage), the EEA and EFTA scenarios will likely receive more airing, either as the UK seeks to innovate a similar model or simply attempts to leverage them as options to achieve a more amenable membership settlement. One thing is sure: losing the UK as a Member State (which means the materialisation of an exit option) would damage the EU's credibility in the world, and this makes it an effective weapon for the UK to fight for milder membership conditions. Even if Great Britain needs EU membership (and because exit options may generate a net loss), the EU also needs the UK.

### The EU Political Context

Cameron's call for reform of the European Union so as to make it more democratic, competitive and transparent sounded conducive to compromise with other governments but was dismissively written off by *Spectator*, the magazine which broke news of the content of the speech ahead of its delivery. "The rest of Cameron's European strategy—the reforms he wants for the continent—we can ignore", it said.<sup>45</sup> It was rather the leverage gained from the speech that counted. From now on, predicted the magazine "the prime minister's negotiating will be immeasurably strengthened because the EU knows that it will not be negotiating with a politician who could be bought off—as Tony Blair was so often—by vague promises of reform."<sup>46</sup> It is a questionable analysis, not least because everyday influence in the EU tends to be built on engagement rather than brinkmanship. It does, however, confirm suspicions about the isolationist mentality behind the speech, and raises the question of what institutional and legal scope is available to the UK to force an amenable unilateral settlement.

Is Cameron's a consensual or unilateral agenda?

When discussing the repatriation of competences to Member States, Cameron did not reveal whether this would concern only the United Kingdom or entail a general delimitation of powers between the EU and Member States. It is clear, though, that if the UK did open up renegotiations with the EU, consensus on the reshuffle of the current catalogue of competences would prove extremely difficult to achieve among governments. Thus, it is more imaginable that he would rather seek to repeal certain legislative acts as a minimum option and repatriate wider powers to London as a maximum one. In case further European integration is triggered by the eurozone members, the UK could also try to secure derogations from such cooperation.

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<sup>44</sup> However, S. Booth and C. Howarth (Open Europe) show that its dependence on the Single Market is comparatively small.

<sup>45</sup> "David Cameron's Europe Speech: the *Spectator's* verdict", *Spectator*, 23 January 2013, <http://blogs.spectator.co.uk/coffeehouse/2013/01/david-camerons-europe-speech-the-spectators-verdict>.

<sup>46</sup> *Ibidem*.

It is this ambiguity between consensual and unilateral priorities that defined the reaction to the speech from across the Channel: in his speech, David Cameron made a show of encouraging the UK's EU partners to open discussions on a reform of the EU in tandem with the process of completing the Economic and Monetary Union.<sup>47</sup> These changes should, in Cameron's opinion, be enacted EU-wide. But by throwing out vague ideas on the necessary reforms and purposefully revealing nothing about the scope of the UK's possible renegotiation mandate, Cameron only increased suspicions that his concerns were purely national. The mixed reaction across Europe to the prime minister's speech and the latent concern about the scope of potential renegotiations<sup>48</sup> diminishes the readiness to pander to UK demands. This was clear in the reaction of states such as the Netherlands, Denmark and Sweden, which traditionally share the UK's concerns, and indeed found echoes in Cameron's speech, but also perceived that on 23<sup>rd</sup> January they had lost their standard bearer.

Even Germany, increasingly perceived as the United Kingdom's bridge to the core of European integration, in its reaction to Cameron's speech left some room to manoeuvre for developing its stance on the British question in the future.<sup>49</sup> Of course, a certain wait-and-see approach concerning the scope of renegotiations envisioned by Cameron is justified by the UK parliamentary calendar and the uncertain development of the balance of power in the Tory Party. Nevertheless, several top figures on the European stage have already cooled any notions that the prime minister might have entertained about simply tabling the UK's negotiating demands as soon as the treaty revision necessary for eurozone governance is opened.<sup>50</sup>

The only real potential bridge between the UK and other governments is the Balance of Competence Review, to which EU partners and institutions are invited to contribute. Signs of attention from other governments as well as from third countries have been registered in Westminster. In this context, a parallel Dutch review might feed into the UK exercise. The Dutch idea to audit the catalogue of competences was envisaged in the October 2012 coalition agreement between the People's Party for Freedom and Democracy and the Labour Party.<sup>51</sup> Additionally, the Dutch government pledged in its programme to ask the European Commission to identify those policy areas in which, in accordance with the subsidiarity rule, competences could be transferred back to Member States. The Netherlands has already launched a domestic review of the subsidiarity clause and its proper application in EU secondary law.<sup>52</sup> The attempt to gain outside input has, however, also given rise to the impression that the UK is sounding out a coalition of governments willing to support the repatriation of competences. This seems to have put off some Member States from contributing to the exercise.

In short, the strong impression that Cameron is principally interested in unilateral renegotiation and the largely negative reaction to this from other governments suggests that

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<sup>47</sup> "(...), But I agree too with what President Barroso and others have said. At some stage in the next few years the EU will need to agree on a Treaty change to make the changes needed for the long-term future of the euro and to entrench the diverse, competitive, democratically accountable Europe that we seek. I believe the best way to do this will be in a new treaty, so I add my voice to those who are already calling for this (...)", D. Cameron, EU Speech at Bloomberg, 23 January 2013, [www.number10.gov.uk](http://www.number10.gov.uk).

<sup>48</sup> "Cameron speech: the view from Europe", *Financial Times*, 23 January 2013, [www.ft.com](http://www.ft.com).

<sup>49</sup> Compare the following statements: Press conference minutes, "Statements von Kanzlerin Merkel und Präsident der Republik Benin" Boni Yayi in Berlin, ("Announcement of Chancellor Merkel and President of Benin"), 23 January 2013, <http://www.bundesregierung.de>; G. Westerwelle, "Wir wollen, dass Großbritannien in der Europäischen Union bleibt" ("We wish the UK to stay in the EU"), press release by the Federal Foreign Office, 23 January 2013, <http://www.auswaertiges-amt.de>.

<sup>50</sup> Speech by President Van Rompuy, *op. cit.*, and a speech given by Minister of Foreign Affairs Frans Timmermans, "Prospects for Revival in the Eurozone—and what place for Britain in Europe?", Policy Network conference, Guildhall, City of London, 28 February, 2013, [www.policy-network.net](http://www.policy-network.net).

<sup>51</sup> "Building Bridges", Dutch Coalition Agreement between People's Party for Freedom and Democracy and the Labour Party, 29 October 2012, <http://www.government.nl>

<sup>52</sup> Annual State of the Union of the Government of the Netherlands, press release, "The Netherlands stands at the heart of a democratic and prosperous Europe", 15 February 2013, [www.government.nl](http://www.government.nl).



UK-EU relations on the question of competencies in the coming years will be rather fractious and antagonistic. Any renegotiation will therefore depend upon the degree of leverage open to the UK to push through its demands, rather than, say, the execution of an EU-wide balance of competences review and the creation of consensus at the level of the 27/8 and EU institutions. Indeed, the lack of clarity about what a new British government would want from Europe prevents even the UK's usual partners from building bridges to it. In order to gauge the leverage open to a new British government, a political, legal and economic analysis is necessary and must answer to what degree a British government would enjoy political support at home for these moves, what would be the legal scope for renegotiation and could a future government create leverage from the various options open to it, and, what would be the economic fallout from these moves for the UK and for the EU.

### Is treaty change a realistic negotiating strategy?

In his Bloomberg speech, Cameron indicated that the renegotiation should be undertaken under the umbrella of a wider treaty revision that he has said he believes will anyway occur to further strengthen the eurozone's economic governance. Such a strategy is unlikely to prove successful very soon. Although treaty revision proposals to facilitate completing EMU have indeed been promised by the European Commission president in his State of the Union speech—delivered to the European Parliament and followed by a “Blueprint” for a deep Economic and Monetary Union,<sup>53</sup> the appetite for opening up the treaties seems to be rather low. This was confirmed by the president of the European Council,<sup>54</sup> and it is also clear that the European Parliament would not welcome any immediate attempts to change EU primary law.<sup>55</sup> The recent declaration of Member States to work on a proposal for treaty change deemed necessary for Germany to put in place a new banking union does not seem to change this reluctance substantially.<sup>56</sup> Apart from anything else, treaties revision might open up something of a Pandora's box, with all the Member States' sorrows and expectations released. This is a risk the Member States themselves do not seem willing to take.

Moreover, even if it were reopened, the British negotiating strategy based on giving a green light to necessary eurozone reforms in exchange for the concession of a better settlement for the UK with Europe is rather bound to fail. In this context, the events of the European Council in December 2011, when an exclusive intergovernmental path was chosen in order to bypass British objections to an EU treaty change and to introduce stricter budgetary discipline (the fiscal compact), should provide British officials with food for thought: key Member States are still prepared to resort to international treaty law as a cooperation platform when EU treaty

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<sup>53</sup> See: J.M. Barroso, President of the European Commission, “State of the Union Address 2012 to the European Parliament”, and also “Communication from the Commission. A blueprint for a deep and genuine Economic and Monetary Union. Launching a European Debate”, Brussels, 28 November 2012, COM(2012)777 final.

<sup>54</sup> I. Traynor, “David Cameron's moves could make EU fall apart, says Herman Van Rompuy”, *The Guardian*, 27 December 2012, and speech by Van Rompuy, *op. cit.*

<sup>55</sup> European Parliament resolution of 20 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup, “Towards a genuine Economic and Monetary Union”, (2012/2151(INI)); see also: A. Gostyńska, tentatively titled “Political Union and political fragmentation: can the non-euro states rely on the Community institutions” in the publication “Is this the Future of Europe?”, PISM, (publication pending).

<sup>56</sup> Informal Meeting of Ministers and Governors, 12 April 2013, declaration document by Member States annexed to the Council: Approval of the final compromise text concerning the Council Regulation conferring specific tasks on the European Central Bank related to policies about the prudential supervision of credit institutions, and Regulation of the European Parliament and of the Council amending Regulation (EC) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) with regards to its interaction with a Council Regulation (EC) conferring specific tasks on the European Central Bank concerning policies related to the prudential supervision of credit institutions, doc. no: 8417/1/13 REV 1, 17 April 2013.

reform is scuttled by a lack of consensus. This undermines the efficiency and leverage attached to such a bargaining chip for the UK government.<sup>57</sup>

What alternative is there for renegotiation?

From a legal point of view, however, there are a number of alternatives open to the UK when it comes to reopening negotiations on its relationship with the EU. First, the UK could demand the repatriation of powers in shared competences by requesting an EU-wide repeal of certain legislative acts adopted by EU institutions. A demand to cease exercising certain competences on the EU level can be justified only if it is done in order to ensure constant respect for the subsidiarity and proportionality principle.<sup>58</sup> Such a request would have to be directed to the Council, which by simple-majority voting may request the European Commission to repeal such an act.<sup>59</sup> It is however, for the Commission to decide if such action is desired to better safeguard the subsidiarity and proportionality rule. This legal scenario seems to be imaginable only if the UK were to target its renegotiation to individual acts of law and was able to persuade other governments—and perhaps most importantly, the European Commission—to follow suit.

Second, a brand new settlement through the permanent repatriation of some competences and the introduction of an emergency brake for some policy fields would require the exhausting process of treaty revision set out in Article 48 of the Treaty of the European Union.<sup>60</sup> This explicitly provides that the revision procedure applies not only to increasing the competences conferred on the EU but also to reducing them. If Cameron is mistaken in his core strategy, and no wider treaty revision to enhance economic governance is initiated by the Commission or eurozone members, treaty renegotiation would have to be initiated by UK itself. The renegotiation machinery would probably also require convening a treaty Convention as envisaged in the treaties. However, it might be an uphill struggle for the UK to gather even a simple majority in the European Council for examining Cameron's proposals, not least because it would be extremely difficult to prevent other Member States from presenting their own wish lists, opening up time-consuming and probably inconclusive negotiations. Therefore, the efficient conduct of such negotiations is imaginable only once the Member States confine themselves to an agenda focused on the UK's case alone. Any amendments agreed during the Convention would have to be determined by the Conference of Representatives of governments of Member States and then ratified in accordance with lengthy national procedures.<sup>61</sup>

Third, if the UK sought EU-wide reforms of Union policies and internal actions,<sup>62</sup> a simplified revision procedure, which does not require calling a Convention, could apply in theory. The treaties envisage such a possibility on condition that the scope of amendments does not result in an increase in EU competences. They do not stipulate, however, whether this

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<sup>57</sup> See: Written evidence from Prof. D. Phinnemore, Queen's University Belfast, to the House of Commons in which the author points out that the UK's demands have exhausted the Member States' patience: Written evidence from Prof. D. Phinnemore, Queen's University Belfast, "The Future of European Union: Forms of Membership", in "The Future of the European Union: UK Government Policy, UK Parliament", [www.publications.parliament.uk](http://www.publications.parliament.uk), 22 May 2012.

<sup>58</sup> Declaration 18 annexed to the Final Act of the Intergovernmental Conference, which adopted the Treaty of Lisbon, 13 December 2007, and Art. 241 of the Treaty on the Functioning of the European Union, O.J. EU C 326/346, 26 October 2012.

<sup>59</sup> *Ibidem*.

<sup>60</sup> Article 48, Treaty on the European Union, O.J. EU C 326/41, 26 October 2012.

<sup>61</sup> It took Member States more than a year to ratify the amendment of only one article, Art. 136 of the Treaty on the Functioning of the European Union. Any wider primary law revision can be expected to last even longer. See a table on the ratification process of the amendment of Art. 136 TFEU, ESM Treaty and the fiscal compact, [www.europarl.europa.eu](http://www.europarl.europa.eu).

<sup>62</sup> Part Three of the Treaty on the Functioning of the European Union, O.J. EU C 326/59, 26 October 2012.

condition should also apply in case of reducing EU powers.<sup>63</sup> Nevertheless, keeping in mind that any British amendment proposals would probably lead to substantial changes in the EU's functioning and redistribution of competences in certain policy areas, it might be expected that they would be regarded as those deserving the Convention's attention. It seems also unlikely that the European Parliament would give its consent to forgoing a Convention as this forum broadens its influence on drafting new EU primary law.

In general, however, any British ideas concerning powers flowing back to London might turn out to be double-edged. As mentioned by the European Parliament's president, any renegotiation is a two-way process and requires concessions from both sides.<sup>64</sup> Member States and institutions might demand that they be permitted to redefine British participation in the EU decision-making process and adjust the United Kingdom's rights to better fit the scope of its commitment to the European project. Today, British representatives, even though their government does not have voting rights in the Council on issues from which the UK decided to opt out, are still allowed to participate in the deliberations. All MEPs, including those from the UK, vote on equal terms on each piece of legislation where the EP has a say. The renegotiation of UK membership carries a potential risk of questioning these rules, with UK representatives losing their rights.<sup>65</sup> It could also potentially lead to establishing a new form of associate membership in the EU with a redefined set of benefits, but also commitments.<sup>66</sup> The question remains open if the UK would accept a new form of participation in the decision-making process reduced to reflect its diminished engagement in the European project.

### The withdrawal option: leverage or Achilles heel for the UK?

This likely demand for concessions from the British side raises speculation about a strategy based on the leverage of the potential withdrawal option and focused on vested national interests with little flexibility towards other Member States' expectations.<sup>67</sup> A withdrawal clause was indeed inserted into EU primary law through Article 50 of the Lisbon Treaty,<sup>68</sup> and it will apply in the current context only if the United Kingdom decides to leave the European Union. Insofar as it gives the UK leverage in any renegotiation concerning competencies, it may afford London a chance to gain a favourable exit settlement. Should the UK be able to employ this alternative option as a cosy fallback, it might be able to bargain hard on its terms for staying in the EU.

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<sup>63</sup> V. Miller, "The UK and Europe: time for a new relationship", House of Commons Library, 24 July 2012, p. 15.

<sup>64</sup> "Schulz on Cameron: 'Second-class EU membership is not in the UK interest'", press release, European Parliament, [www.europarl.europa.eu](http://www.europarl.europa.eu).

<sup>65</sup> See written evidence from Prof. D. Phinnemore, *op. cit.* Initiating discussion on the necessary adaptation of the EU supranational institutions towards differentiated integration should be equally prevented by Member States that have not yet adopted the common currency. It has already been argued by French and German representatives that deputies to the European Parliament originating from those Member States are not legitimately able to vote on euro-related matters.

<sup>66</sup> A. Duff, "On dealing with Euroscepticism", *Journal of Common Market Studies*, vol. 51 no. 1, 2013. Interestingly, an associate membership already had been proposed by Mr. Duff as an alternative to a withdrawal clause in the works of the Convention concerning the treaty establishing a Constitution for Europe. See: S. Berglund, "Prison or Voluntary Cooperation? The Possibility of Withdrawal from the European Union", *Scandinavian Political Studies*, vol. 29, no. 2, 2006, p.154.

<sup>67</sup> This has been also recognised by John Major, "The Referendum on Europe: Opportunity or threat?", transcript of speech, Chatham House, 14.02.2013, [www.chathamhouse.org](http://www.chathamhouse.org).

<sup>68</sup> The inclusion of an exit clause in EU primary law was perceived by the Convention's drafters as a threat to efficient decision-making and a too-easily accessible form of a bargaining chip in negotiations. See: amendments to a related article about the Draft Treaty establishing a Constitution for Europe, "Summary sheet of proposals for amendments concerning Union membership: Draft Articles relating to Title X of Part One (Articles 43 to 46)", European Convention Secretariat, Brussels, 14 April 2003, Conv 672/03, <http://european-convention.eu.int/pdf/reg/en/03/cv00/cv00672.en03.pdf>.

According to Article 50, London would have to give notice of its intention to leave to the European Council, which sets guidelines for negotiations with a Member State wishing to withdraw. Similarly, the agreement setting up the framework of the future relationship of the withdrawing Member State with the EU is concluded by the Council by a qualified majority vote after obtaining the consent of the European Parliament. British representatives would be excluded from the deliberations and voting procedures in both the European Council and the Council of the EU. However, it is not entirely clear if MEPs coming from the UK would be allowed to participate in the European Parliament's voting, although the supranational character of this institution suggest so.<sup>69</sup>

Negotiating parties should take utmost care to make any withdrawal agreement as detailed as possible in describing the rules governing both the transitional and future relationship between the EU and withdrawing Member State so as not to create superfluous chaos and uncertainty as to the UK's future privileges and commitments arising from its 40 years of EU membership. It is not certain, however, if a withdrawal agreement would stretch to cover the full range of policies in which the United Kingdom would like to remain a privileged partner of the EU. Additional negotiations afterwards might thus turn out to be inevitable.<sup>70</sup> Also, in the case the UK is effective in withdrawing from the EU, a treaty revision to adjust the EU institutional setup to the new status quo would be rather unavoidable—something that could be disruptive to the other Member States.

Furthermore, the need to conclude a withdrawal agreement with the EU<sup>71</sup> does not affect a Member State's unilateral right to leave the EU. Withdrawal becomes legally effective two years after notification even if an agreement has not been concluded.<sup>72</sup> This in fact holds attractive bargaining power, particularly for big Member States whose unilateral withdrawal might result in overwhelming costs for the EU itself.<sup>73</sup> However, if British citizens saw their future outside the EU and decided to withdraw, UK would surely seek a special status of partnership with the EU. This would in turn require goodwill on the EU side and from every single Member State. Thus, the probability of using this argument as a trump card in any further negotiations on a new status is rather low.

Article 50 TEU is ambiguous about the legal status of a withdrawing Member State in the transitional period between the notification of withdrawal and the moment when the treaties cease to apply to it. It is disputable whether such a state is entitled to remain actively involved in the EU in the transition period. The full participation of the British delegation in EU decision-making, particularly in adopting EU law could encounter opposition from those Member States with opposing agendas. It is, however, proper to expect that a withdrawing Member State should abide by a principle of sincere cooperation even though it already has one foot outside the EU.<sup>74</sup>

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<sup>69</sup> A literal reading of the treaty provisions on the supranational character of the parliament would suggest that deputies coming from the United Kingdom should be allowed to vote. Nevertheless, this would probably raise controversies among other Member States and even amongst MEPs themselves.

<sup>70</sup> See also: A. Łazowski, "How to withdraw from the European Union? Confronting hard reality", *CEPS Commentary*, 16 January 2013.

<sup>71</sup> It should be noted that a withdrawing Member State concludes an agreement with the European Union, not its Member States. This is in contradiction to an accession agreement, which is concluded between the acceding state and the Member States of the EU.

<sup>72</sup> The European Council in agreement with the withdrawing Member State might prolong this period unanimously. See: Art. 50 of the Treaty of the European Union, O.J. EU, C 326/43, 26 October 2012.

<sup>73</sup> R. J. Friel, "Providing a Constitutional Framework for withdrawal From the EU: Article 59 of the Draft European Constitution", *International and Comparative Law Quarterly*, 53/2, April 2004, p. 426.

<sup>74</sup> H. Hofmeister, "Should I stay or should I Go? A Critical Analysis of the Right to Withdraw from the EU", *European Law Journal*, vol. 16 no. 5, September 2010, p. 599.



## Conclusions: Bridging the Gap between Exceptionalism and Integration

The 26 are troubled, not to say tired, by the UK sitting on the bench in its approach to further integration. The continued lack of clarity about the country's potential wish-list for renegotiation does not help matters. Yet, they also perceive that uncertainty about the UK's demands weakens Britain's worldwide image more than it does the EU as a bloc. Most European leaders, although rather sceptical about the direction of British domestic discourse, would therefore rather take a wait-and-see approach, knowing also that the intolerance of British business for continued uncertainty will only grow. Moreover, even though the British people are fundamentally unhappy with the EU, and their desire to express that dissatisfaction has gone far beyond the tipping point, some EU governments reportedly hope that a Scottish breakaway, the re-establishment of the eurozone's economic health or the emergence of a Liberal-Labour coalition will simply resolve the situation.

It is, in short, a setup in which neither side has an incentive to move first, and where the demanding EU agenda and need for decisive joint action will only intensify tensions. This is particularly damaging to Poland, which is one of the Member States most directly affected by the central tension in Cameron's speech: Warsaw may have outgrown its position as "the UK's ally" on EU enlargement or economic liberalism, but it shares many of the concerns highlighted by the British prime minister, not least the call for greater inclusiveness to be shown towards non-euro members. The UK ought, therefore, really to be a key ally as Warsaw seeks to move the EU eastwards and give it a more global mindset. And yet, Poland finds itself alienated by the tone of the speech, the clearly unilateral nature of the agenda, and the lack of self-reflection.

The UK, too, is caught in this paradox between unilateralism and consensualism. Its position is justified by a popular sense of exceptionalism, and yet, it is not exceptional. Like all EU members, it has a unique history and potential to contribute to the EU. The urge for unilateralism, thus clashes with the reality of a system that is built on joint decisions and consensus (a reality to which London has signed up for 40 years). It is also self-reinforcing. If the UK today finds itself increasingly subject to decisions that it dislikes, it is because it has in the past bargained for itself unilateral opt-outs and other legal safeguards, thus reducing its formal scope for engagement.

### The Difficulty of Bridging the Gap

"Unilateral renegotiation" in which the UK demands a new special status for itself would therefore resolve little. From the point of view of most Member States, the British move would merely open up a Pandora's box for other unilateral moves—across the EU, governments are subject to pressure from Eurosceptic parties, which call for just such moves. It would be wrong, of course, to believe that other Member States would automatically follow the British lead and demand repatriation, but the temptation exists. Precisely because the prospect is appealing, it will create difficulties for governments that can in reality only jointly solve the problems of the EU—including criticism of its excessive centralism and of the fact that once gained (or rather acquired—the root of the word *acquis*) legal powers seldom flow back from the EU to the Member States.

A unilateral renegotiation could also cause more problems than it resolves for the UK itself. This is not merely because popular calls for an EU exit would persist. The move would actually alienate the very ones who vote "Yes"—Pro-European British do not, presumably, wish for a substantial change in the UK's relations to the EU. They would vote "Yes" only to avoid the exit option. Other voters might be in favour of a new relationship, but not a Conservative one. They, too, would vote "Yes" to preserve membership, but dislike the settlement. Moreover, the prime minister's primary concern is not to reconcile voters to the tradeoffs of any new relationship with the EU, but to outmanoeuvre his backbenchers. That means he will likely make his case by painting a bleak picture of exit rather than by making a positive case for

continued membership. Voters would not be reconciled to the difficult side of EU membership—the contributions to the EU budget or obstacles to single market liberalisation.

A consensual approach will also be difficult to achieve. Already there are reports that France and Germany have “snubbed” the UK’s Balance of Competencies review, meaning that this particular avenue of exchange is restricted. There seems little appetite for a serious review at the EU level either, since this might also have a Pandora effect as well as require intense negotiation to reverse commitments, even in secondary law. This shows how the question of the reform of the EU has been set back years by the premier’s speech. Not only has Cameron marginalised himself and his country, he has attached a pressing EU-wide issue to that of UK exit—an unfortunate politicisation.

### **A New Status for Britain, a New Risk for Poland**

The 27 will nevertheless soon have to deal with the problem in an integrated manner. This might resuscitate the idea of creating an associate membership status, abandoned during the 2003 Convention on the future of Europe. It is argued by British MEP Andrew Duff that such a status could not only embrace both incoming (Turkey) and outgoing (UK) countries but also those currently in limbo in European Economic Area arrangements.<sup>75</sup> The rights and obligations would be tailored case by case to the political and economic needs of those countries, meaning that the creation of this new status would have to be underpinned by a strong, positive narrative to explain its rationale among the societies of other Member States that remain fully committed to the European project. Only with a clear understanding of why the status is offered will there be mutual acceptance for the trade-offs involved, a clear picture of the rights and duties and restrictions on the spread of the status. In the context of a changing global environment, it is not difficult to see why some states in the EU’s proximity require a more autonomous status, nor why this might be connected with a particular duty to help the EU attain its international objectives.

The resolution of the situation might also see EU institutions engage more wholeheartedly with the UK’s domestic debate, offering expertise to the parties involved in the UK’s balance of competencies review and—most importantly—integrating the more generic results at the EU level. This effort to increase the effectiveness of EU action would prove that Brussels is taking a constructive approach to the UK’s societal concerns but at the same time disfavours any attempts at having a reflection on Europe in isolation of the EU structures. The EU institutions, moreover, might specifically tackle the deficiencies enumerated in the prime minister’s speech of 23 January. Narrowing the distance between citizens and the EU is bound to fail without proper institutional engagement.

Poland has a particular stake in the resolution of the problem. The precedent of associate status for the United Kingdom could undermine Polish efforts to prevent a dilution of the EU’s enlargement policy. But above all, it would raise the question of participation rights in decision-making in policy areas to which not all Member States are party—in Poland’s case, the eurozone. A formalisation of the relationship of the “pre-ins” with the eurozone, parallel to an agreement on the UK’s new status, might at first sight seem appealing if it offered decent rights during the current, hot phase of eurozone reform. In the long term, however, it could well entail dangerous fallout for them. The creation of a formal new status for the “pre-ins” would amount to a new category of membership in the EU. This poses the risk that Poland and other “pre-ins” might be placed on a separate track for longer than they actually expect to complete preparations to join the euro, restricting their informal scope to co-shape EMU architecture. An awareness of these parallel tracks and risks, however, should allow Poland to secure a better status for itself and its eastern neighbours as they move closer to the EU.

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<sup>75</sup> A. Duff, “The Case for Associate Membership of the European Union”, London School of Economics, European Politics and Policy (blog), 6 March 2013.



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