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Thinking ahead for Europe

Britain's Political Earthquake:
What aftershocks for Europe and the UK?

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So David Cameron confounded the polls and won a thin but absolute majority in the House of Commons, while all his adversaries in England were crushed, as witnessed by the immediate resignation of the leaders of Labour (Ed Miliband), the Liberal-Democrats (Nick Clegg) and even UKIP (Nigel Farage). But then Nicola Sturgeon and also the Scottish nationalists triumphed, sweeping up 56 out of the 59 Scottish constituencies.

The first consequence for the EU will surely be that Cameron will announce legislation to fix the date for the in-or-out referendum scheduled for 2017, with some discussion whether it could be brought forward into 2016. That will be the easy part. Far trickier will be the second step to set out what in operational terms he actually wants, going beyond his vague rhetoric about "renegotiating a new settlement or better deal for the UK within a reformed EU" (which has been his language so far). And in a third step, he will need to negotiate some agreement or settlement that will enable him in principle to announce the terms under which he can recommend continued membership of the EU in the fourth and final step, the referendum itself.

The UK's demands

What could be Cameron's demands to the EU institutions and other member states, under the three key words he has been using: repatriation, renegotiation and reform?

Repatriation in any strategic sense means deleting competences from the Lisbon Treaty for all member states. But Cameron's Balance of Competence Review went into this question thoroughly and found no instance for which there was a sound case for repatriation. Most EU competences are 'shared' with member states, and the findings of the Review were invariably that the balance in the sharing was 'about right'. If Cameron nonetheless took up a repatriation war-cry like many of his Tory MPs would like to see him do, the rest of the EU would simply point out that his own evidence does not support this position. At the level of secondary legislation, there can be a weeding out of unnecessary or obsolete regulations and directives ('red tape' in populist jargon), which is precisely what Frans Timmermans, first Vice-President of the European Commission, is now mandated to do. Cameron can certainly champion these initiatives as something that he has wanted all along. And if he wants to call that repatriation, so be it.

Renegotiation means changing the specific terms of the UK's membership. Here the scope for Cameron is objectively limited by three factors: first, a large number of EU policies concern the

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broad single market area, but it is precisely in this area that British citizens have attached the highest priority to see more rather than less EU action, and above all to have it applied by all member states; second, the UK's existing opt-outs are vast (euro, Schengen, justice and home affairs), so there is nothing to renegotiate there; and third, decisions in major domains such as foreign and security policy and taxation, are subject to unanimity voting, so nothing can pass there without the UK's agreement. These are the reasons why Cameron's renegotiation talk has sounded so thin in substance.

Two conspicuous complaints remain outstanding from the UK: immigration from the EU and some labour market regulations (e.g. the working time Directive). On immigration, Cameron's first line of action can be to exploit the recent Dano ruling of the Court of Justice of the European Union of November 2014, which confirms national competence for setting the criteria for residence by 'other' EU nationals, which in turn determine access to many social welfare benefits – the so-called 'benefits tourism'. The UK can recalibrate these criteria on its own responsibility, without entering into any renegotiation. However, several other richer member states have similar concerns over 'benefits tourism'. Even if the evidence of this phenomenon is quite weak, there might be some new secondary EU legislation in this area. On the working time Directive, some specific UK opt-out of selective provisions, e.g. for hospital workers, could be agreed.

Reform, by contrast, or policy improvement, offers a very substantial agenda, in many instances corresponding closely to what the UK has been driving at. Cameron wants 'a reformed EU'. This is not a good choice of wording, since the processes of negotiation within the EU across its array of competences are complex, continuous and ongoing, and cannot conceivably be delivered in a neat package in time for the UK referendum. However, a slight shift in language could connect with realities, e.g. for Cameron to claim success in building up a critical mass or momentum for policy reform or development, and concretely so in such areas as services in general, financial services in particular, energy and climate, and the digital sector. Alongside this agenda for policy development, there is a naturally logical place for the Timmermans agenda for cutting EU red tape. Cameron could also point to recent reform achievements in agriculture and fisheries, and in achieving some cuts in the EU budget for the multi-annual period until 2020. Looking ahead, the EU is engaged in many trade-opening negotiations, including with the US, India and Japan, which corresponds to a key UK priority.

Possible outline of a Cameron EU reform package

- *Reform momentum achieved in key areas such as services, capital markets, energy and the digital sector*
- *In the financial services sector, also a consolidation of guarantees that the City will not be discriminated against by the eurozone*
- *Reform results with the Commission's top-level initiative to cut red tape*
- *Multi-annual budget shifted onto a downward path in real terms*
- *On immigration for EU, recalibration of residence criteria (per Dano ruling), plus some secondary legislation without breaching freedom of movement or of employment*
- *Marker put down for migration conditions for future accession negotiations*
- *Some limited labour market opt-out*
- *Reinforcement of the role of national parliaments in relation to EU legislation*
- *Large trade liberalisation agenda*
- *No treaty changes now, but possibly some adjustments agreed for a next treaty revision*

Would this fly?

The package outlined above could be broadly acceptable to Brussels and other member states. One can imagine, for example, the Dutch Presidency of the Council in the first half of 2016 facilitating the process. The agenda would be naturally attractive to the Netherlands, while this country's traditional close and trusting relationship with the UK would help establish a positive climate for securing agreement. The package would be implemented in its details through various actions by the UK and the EU, but could be wrapped up in a European Council political declaration or protocol.

But all this would take place without treaty change. Many member states adamantly oppose the idea of treaty change these days for any purpose, let alone just for the UK. And none of the items on the agenda outlined requires treaty change. The eurozone system may warrant treaty change, although that is not clear, but in any case the precedent has been created for treaties adopted just by the eurozone countries. There is some talk of agreeing some treaty changes that would be held back until there was a new general treaty revision, as an element of compromise.

Would this fly at home for Cameron? The agenda outlined is certainly short of what many Tory MPs say they want, including generally unspecified repatriation of EU competences. Without the restraining presence of the Liberal-Democrats in a coalition government, might the all-Conservative government be tempted to switch into making far more radical demands, such as indeed the categorical repatriation of treaty-level competences, thus requiring treaty change? It is certainly easy to dress up a Eurosceptic or Europhobic agenda that would please some MPs but prove completely unacceptable to the rest of the EU, such as abolishing the free movement of persons or abolishing competence for labour market and social policy. Of course, various Europhobic Tory MPs would welcome a radical agenda that was sure to fail and thus lead on to a no vote in the referendum.

How strongly will Cameron be tempted to yield to such pressures? At this point the new Scottish reality comes into play. The Scottish SNP leader, Nicola Sturgeon, has so far said quite clearly that she would not favour revisiting the independence question with a new referendum except under materially new circumstances, or a 'new situation'. UK secession from the EU is clearly the number one hypothetical new situation. But if Cameron's negotiations with the EU started going badly wrong, this hypothesis would liven up. Cameron would then be facing his ultimate nightmare scenario, of presiding over simultaneously the secession of the UK from the EU and of Scotland from the UK. Just try to imagine it. What if the UK were in the process of a very complicated withdrawal negotiation from the EU, while at the same time renegotiating with the rest of the world new trade and other treaties with third countries given that the UK had fallen out of the EU's hundreds of treaties on day 1 of secession, while also negotiating the terms of its relationship with an independent Scotland, while Scotland itself was also seeking to open negotiations for access to the EU?

This mind-boggling legal-political imbroglio would be Cameron's political legacy, if he were to cede to the preferences of his Europhobic MPs. Of course this is an ultimate nightmare scenario, but who has not awakened from a nightmare to discover with relief that the world is not so bad after all? In reflecting on the implications of this hypothetical nightmare, which of course would inflict devastating damage to the British economy, one might conclude that a safe and realistic agenda for reaching agreement with the EU looked quite attractive after all.

Could Cameron add some constructive components to his reform package?

Well yes, there is one obvious candidate: to become a leading proponent of a more effective European foreign, security and defence policy, adding to the UK's existing activism on single market, energy, climate and digital sector policies. Cameron's first government has charted a

reverse course on foreign policy on a most alarming scale. There used to be a 'big three' in EU foreign policy. Now there is only a 'big two', namely Germany and France (or is it just one big Germany?), as we have seen in the case of Ukraine, notwithstanding that the UK was, alongside the US and Russia, one of the three guarantors of the 1994 Budapest memorandum, which was meant to guarantee Ukraine's security and territorial integrity. The UK has been tarnishing its own diplomatic reputation and severely drawing down its military assets. In the early days of the Cameron government, the Foreign Office engaged in a miserable nit-picking campaign, in a minority of one among the member states, to use every conceivable legal-bureaucratic means to prevent the EU from becoming a more visible actor in international affairs in the wake of the innovations of the Lisbon Treaty. This may have gone unnoticed by British public opinion, but it was certainly noted by the other member states and the EU institutions. Britain's current programme of defence cuts will deplete the only serious military capability in the EU apart from France at a time when our strategic security threats, from Russia to ISIS, are more challenging than they have been for decades.

Has all this gone beyond the point of no return? No, not yet, although big damage has been done and there is more in the pipeline with the defence cuts. Nevertheless, there is still room for a fresh initiative to contribute in a very significant way to the enhancement of the EU's foreign, security and defence policy. It is an open matter for Cameron's political choice. If he wants to include some initiatives in his agenda for a new settlement with the EU that would require the active support and goodwill of his partners, it might be a good idea to start with this one.

Finally, what does this portend for the British electoral system?

For some time now the debate has been rising in the UK whether its first-past-the-post, single member constituency system was the best after all. The well-known arguments in favour of electoral systems that deliver stable and decisive government, versus unstable and indecisive coalitions, will surely go on forever. Italy has made a move to switch from the latter category more towards the former. In the middle are many European countries that function quite well on coalition governments based on various degrees of partial proportional representation. As to the democratic imperfections of the traditional British system, this new election has delivered devastating results. With only 4.7% of the votes, the Scottish SNP won 56 seats. With 7.9% of the votes, the Liberal-Democrats won 8 seats. And with 12.6% of the votes, UKIP won 1 seat! The political scientist would say this is not good governance: the system lacks legitimacy and elementary fairness.

Will Cameron reform the system in a more proportional direction? Whatever its merits, such reform would run up against two problems. It would mean a declaration of war against the Scots and opening the door to the UKIP. Seen in the light of these consequences, it is highly likely that reform will be postponed.