

Looking Back to Look Forward: the UK's relationship with the European Union

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Introduction

The United Kingdom's fraught relationship with the European Union is about to enter a new and crucial phase. Prime Minister David Cameron's commitment to hold an 'in-out' referendum if he won the election in 2015 based on re-negotiated terms of Britain's membership will become a reality on 23 June 2016.

How have the UK and its partners arrived at this point and, more particularly, what might be the consequences of a withdrawal? Even if the referendum results in a victory for the pro-membership campaign, there will be consequences that are difficult to predict. This paper examines some of the policy issues that will arise in either case and attempts to draw a picture of some of the consequences for the EU.

The UK's Political Ambivalence

Britain's ambivalent attitude to European integration has a long history, which can be traced back to nineteenth century politics and, perhaps more fancifully, to the Middle Ages or the Spanish Armada. Britain has always tried to maintain a policy of balance of power in Europe such that no one continental country should dominate. In the twentieth century, two world wars convinced the British that, as Margaret Thatcher put it, their problems arise from continental Europe and that only British tenacity and democratic values could resolve the conflicts. Why then become involved in complex treaty arrangements requiring the pooling of sovereignty?

Throughout the post-war period leading up to the Treaty of Rome, and since, British political parties have vacillated back and forth in their attitudes to the EU. As Denis McShane (2015), formerly Tony Blair's Minister for Europe, put it:

'Both Conservative and Labour leaderships and their ministers when in government have consistently supported NATO, rebutted criticisms of Atlanticism and supported nuclear weapons. In contrast, Europe has never engaged much support. The question of Europe divides British politics as no other issue. And with governing parties and ministers so uncertain, so willing to find fault with Europe, why should voters be any different?' (McShane 2015).

For the left in British politics, Brussels is too business-friendly, and for the right, it is hostile to capitalism. Margaret Thatcher was openly antagonistic towards the EU in her speech at the College of Europe in Bruges in 1988 and yet it was she who signed the Single European Act bringing in qualified majority voting (Young 1998). As Andrew Geddes (2013) writes:

By bundling the manifold policy expertise of the researchers of the Institute for European Studies (IES), this paper forms part of a series of analyses investigating the potential implications of a 'Brexit' scenario for different EU policies. All papers ask the same three questions: 1) What is the state of the EU policy in focus? 2) What is the UK's role/interest in this policy field? 3) What are the potential implications of a 'Brexit' scenario at the policy-level?

After Claire Dupont and Florian Trauner [introduce the project](#), Richard Lewis sets [the historical and cultural context](#) and explains how the UK and the EU have come to such a low-point in their relations. Next, five policy fields are analysed: [justice and home affairs](#); [free movement policies](#); [EU external representation](#); [the \(digital\) single market](#); and [environmental policy](#).

'The Conservatives went from being a pro-European integration party, albeit based on a pragmatic acceptance of the EC as good for business, to hostility towards European integration that was strongly based on the Thatcherite legacy.'

The British do not consider themselves 'Europeans'. They talk and write about 'Europe' as if it were on another continent. Winston Churchill said as long ago as 1930 that 'we are with Europe, but not of it' (Saturday Evening Post 1930, as quoted in Coudenhove-Kalergi 1953). In his seminal speech in Zurich in 1946, he spoke of the United States of Europe, yet he did not mean that the UK should be considered part of that enterprise. For the British, or more specifically the English, Europe is about interest not identity (McShane 2015:166). This can be illustrated in the attitude of Mr Cameron defending the financial interests of the City of London.

There is no vision of Europe amongst British politicians or the public as there is on the continent. These attitudes have been fostered by a vehemently hostile press and popular media led by the Australian-American Rupert Murdoch, over the 40 years since the UK acceded in 1973. As Reuters correspondent Paul Taylor wrote: 'The aim of the Eurosceptic press is not to present reasoned arguments, but rather to demolish it through funny, unlikely stories ... they don't want facts to get in the way of a good story' (McShane 2015:166).

There are three other factors that need to be elucidated in order to explain the current situation. The first is the almost sacred doctrine of sovereignty of Parliament as set out by Walter Bagehot (1867) in the nineteenth century. It matters little that the British have signed numerous bilateral and multi-lateral treaties that limit the margin of manoeuvre of Parliament (NATO being a prime example). In addition, devolution of powers to Scotland and Wales has made inroads into this doctrine. However, they see the EU as being uniquely antagonistic to parliamentary sovereignty as illustrated by the comments about 'unelected officials in Brussels', ignoring, for example, that the entire cabinet of the United States is appointed and not elected.

The second is the lingering attachment to the English-speaking world. This is not an attachment that is comparable to the Francophone world, which is mainly based on language and culture. It is the sentiment that the 'old' Commonwealth, Australia, New Zealand and Canada in particular, plus the United States, constitute a unique bastion of Anglo-Saxon values whilst assuring that Britain will be able to trade with and influence a geographically wider hegemony than exists in Europe. There is some validity in this argument, but these countries have moved on since their original criticisms of UK membership and none of them would now like to see Britain leave the EU (see BBC Interview with US-President Obama 2015).

The third is that whereas the UK was economically behind the other major economies of Europe in the 1970s and 1980s, since the end of the recession that began in 2008, the reverse is the case. Whether this can be ascribed to the problems of the euro or the rigidity of continental European economies can be endlessly debated. In any event, it is a fact that militates against the arguments for remaining in the EU on the basis that Britain does not need the EU to prosper.

It is not the function of this paper to analyse the economic case for Britain to remain in the EU. However, the effects of staying on or leaving the EU are significant, if not crucial. The consensus appears to be that Britain's overwhelming economic interest is to remain a member. The Eurosceptics are convinced that leaving the EU would allow the UK the freedom to negotiate its own trading arrangements with the rest of the world that would be more advantageous and lead to wider trading horizons. However, nothing in the treaties prevents the UK from developing trade and cooperation with any other country. Indeed, other EU countries are doing just that and sometimes more effectively than the UK.

The forthcoming referendum has to be seen against this background. To be sure, there are many convinced Europeans in the UK but they will have to combat a fierce wall of not only Euroscepticism but also hard-core euro-phobia that refuses to acknowledge the achievements of European integration and only highlights the setbacks. David Cameron has, therefore, adopted a high-risk strategy of staking everything on this one vote. Given the inroads that UKIP has made on right-wing voters and the eurosceptic right wing in his own Conservative party, he probably had little choice. However, his strategy of re-

negotiation – a term, it should be recalled, that was used by the Labour Wilson government in 1975 – could easily work to his disadvantage. The 1975 re-negotiation was derided by its opponents as window-dressing and this second exercise is already suffering the same fate. Even if he succeeds in convincing the British public of its merits, the margin of victory risks being thin. The likelihood is, therefore, that the Eurosceptics will be calling for another vote at a future date and such is the strength of their numbers that they may eventually succeed. The EU issue is unlikely to be solved by the referendum, even for a generation.

The Campaign In or Out

David Cameron has repeatedly argued that he will campaign for Britain to remain in the EU if he obtains from his negotiating partners 'a fair deal for Britain'. He has declared the re-negotiation a satisfactory outcome for the UK. It is difficult to understand what he meant by a 'fair deal'. The principle of a 'variable geometry' EU is not in question. The UK already has opt-outs for a number of key policy areas – the euro, the Schengen agreement, justice and home affairs. Thus, the issue of protecting what might be considered key sovereign areas and essential British interests is hardly an issue. UKIP and the Conservative right are calling for complete withdrawal and an amicable negotiation under article 50 of the Lisbon Treaty. Nothing less will satisfy them or was ever likely to do so whatever the results of the re-negotiation.

However article 50, which for the first time in the EU treaties spells out that a member state may decide to withdraw from the Union, is untested. There is no precedent, so the withdrawal negotiation scenario is uncertain, although it is likely to be an accession process in reverse. What article 50 does spell out, however, is that the withdrawing state will notify the European Council of its intentions and thereafter there will be the conclusion of an agreement by the Council, acting on a qualified majority, with the withdrawing state. The treaties will cease to apply to the withdrawing state after conclusion of the agreement or, failing that, two years after the first notification unless the Council unanimously agrees to extend that period. Given the complexity of such negotiations, it is not impossible that the UK could be either left in a legal limbo or subject to the uncertainties of a unanimous vote in the Council.

David Cameron staked the re-negotiation on a number of key issues

- An exemption for the UK from the principle of an 'ever closer union'
- An explicit statement that the euro is not the official currency but that the EU is a multi-currency union
- A 'red card' system giving groups of national parliaments the power to stop unwanted legislation and to scrap redundant legislation in force, in other words a reduction of red tape
- An emphasis for EU policies to be oriented towards growth, investment and jobs
- A mechanism to prevent domination by the Eurozone countries over those member states that do not use the euro in protecting and developing the single market
- Restrictions for four years of benefits paid to EU immigrants

On 2 February 2016, after intense negotiations at political and officials levels, Donald Tusk, President of the Council, published a draft decision for consideration by the European Council held on 18-19 February that addresses all of these issues. The draft decision underlines that the UK is already entitled not to adopt the euro or to participate in the passport-free Schengen area and

to choose whether or not to participate in measures regarding justice, freedom and security. This emphasises the fact that until now, the UK has had relative freedom to go its own way, even on key issues defining the Union.

The conclusions of the European Council published on 19 February (EUCO 1/16) are striking in their reiteration of the flexibility of treaty provisions that allow member states a high degree of leeway in interpreting the principles of the Union (mainly free movement of goods, capital and persons and non-discrimination) where exceptional circumstances exist. It is true that, in particular, for the UK's claims for safeguards against abuse of social security systems, secondary legislation is required that could apply to all member states, not just the UK. But the conclusions are largely framed to clarify existing Union practice. This illustrates the misleading gloss that British politicians often give to Union legal provisions underlining alleged negative aspects. In reality, there are existing ways to meet individual member states' concerns without any of the changes agreed on 19 February.

With regard to the euro, the conclusions indicate that, whilst maintaining that the euro is central to the achievement of economic and monetary union, no member state is obliged to adopt the single currency. Non-participants will not create obstacles to the process; in reciprocity, the rights and competences of non-participants will be respected. At the same time, the informal meetings of ministers of member states that use the euro will not usurp the functions of the Council and its legislative powers. This allays UK fears that decisions that affect the financial interests of non-participants will be respected even if they do not vote. Given Mr Cameron's Conservative Party's close links with the City of London, this is an important clarification to have achieved.

Regarding the regulatory burden, it is not commonly recognized that the European Commission launched a Better Regulation plan as early as 2002. The latest iteration of this programme is known as the Regulatory Fitness and Performance Programme (REFIT). This process is ongoing. The text of the Council conclusions reinforces the European Commission's commitment to competitiveness pledging to strengthen the internal market and take concrete steps towards better regulation and lowering the administrative burden. The British, however, would have to understand that a single market is not simply a customs union; common regulations and standards are required to make it work, enforced by the European Court of Justice, and these replace existing national regulations. These basic mechanisms of the EU are often poorly understood both by the political elite and the public in the UK.

Concerning the right of oversight of national Parliaments on EU proposals, Mr Cameron has won a minimalist concession that if 55% of the votes allocated to national Parliaments, through a reasoned opinion, object to a draft EU act, then it will be discussed and, if not amended in accordance with the reasoned opinion, withdrawn. The Prime Minister's critics have already stated that this safeguard is far from sufficient. Indeed, the reality is that this provision would be difficult to invoke. In any case, the likelihood is that a legislative proposal from the Commission that met stiff opposition from member states in Council working groups or the Committee of Permanent Representatives would never reach the full Council and be withdrawn.

Mr Cameron has won substantial changes in the interpretation and application of social security legislation. This always was and remains a national competence. The Council conclusions reiterate that member states 'have the right to define

the fundamental principles of their social security systems and enjoy a broad margin of discretion to define and implement their social and employment policy, including setting the conditions for access to welfare benefits'. The new provisions concern, in particular, the right to index child benefits according to the standard of living of the country where the child is living rather than the country of residence of the beneficiary worker, the possibility to phase in the rights to non-contributory benefits over a period of four years and anti-fraud measures such as sanctioning marriages of convenience. There are, furthermore, safeguards relating to 'overriding reasons of public interest'. Although this was less than the Prime Minister had requested, it is nevertheless a change of substance albeit with a time limit of seven years. It should be understood that the enabling legislation will apply to all member states that opt into it, not just the UK. It follows that it is possible that British workers in other EU states will also receive less in benefits.

The Council conclusions regarding sovereignty and the interpretation of 'ever closer union' are very clear. 'Ever closer union' does not confer the right or a legal basis to extend provisions of the treaties or of secondary legislation. Nor does it preclude the reduction of EU competences and the return of powers to the member states.

However, it is already evident from remarks of British politicians who have declared that they will campaign for exit from the EU that this is far from adequate. In a sense they are correct. It is fundamental to the functioning of the EU that EU law takes precedence over national law unless challenged in a judicial process as laid down in the treaties. This is a direct contradiction of the notion of parliamentary sovereignty as interpreted by Walter Bagehot.

Outcomes post Referendum

If the outcome of the negotiations and the referendum is in favour of Britain remaining in the EU, the euphoria will be short lived. The anti-EU camp will not disappear and the UK will remain the recalcitrant European. The EU as a whole will breathe a sigh of relief because the withdrawal of a major partner with a pragmatic view of world affairs and the technicalities of trade would be a major and possibly fatal blow to the European project in terms of what can be achieved by European integration.

In addition, there is the fear that other member states whose political elite might harbour similar concerns about EU policy areas might be tempted to take the same path as the UK. No other member state has taken such a semi-detached attitude to the EU as Britain but there have certainly been criticisms along the same lines, to say nothing of the rise of nationalist elements in the political life of certain member states, even in the staunchest supporters of the Union.

However the issues that trouble the UK will not be solved at a stroke, whatever the result. In the first instance, the treaty changes required for some aspects of the European Council conclusions are lengthy and drawn out even if the process is launched soon after the referendum. Mr Cameron needs to demonstrate results to the electorate immediately and this can only be achieved by political declarations that will be denounced as not being sufficiently watertight by the eurosceptic camp. He has the advantage that the conclusions of the Council explicitly say that they are legally binding on the member states but this is not easily explained to voters. They have subsequently been deposited at the United

Nations as an international treaty. This notion has already been criticised by some British politicians. They say that the conclusions can always be challenged in a court. This is true of any legal instrument. However, it is very unlikely that a court would fail to follow the dicta of the European Council.

If the referendum goes against the UK remaining in the EU, the immediate aftermath will be great uncertainty. This will first manifest itself in the probable demands of Scotland for a further referendum on independence because it is already clear that Scotland would likely vote overwhelmingly to remain in the EU. The position of Ireland with its common land border and remaining residence and voting privileges vis-à-vis the UK will be in question. Questions will then be raised about UK citizens living and working in other EU countries. Aside from that, undoing or keeping the links, whether trade-related or in the various cooperative programmes, is likely to take several years to sort out during which time investment prospects in the UK economy will hardly be improved. The arguments for and against a European Economic Area solution for the UK have been well rehearsed but would not put Britain in a favourable negotiating position either immediately or in the future. Indeed the only possible result from that solution would be that, in order to remain in the single market, the UK would be bound by EU rules without having a voice in the legislative process, whilst still paying into the budget.

There is, of course, no precedent for a member state to withdraw from the EU, nor was there any mechanism to do so before the Lisbon Treaty. The immediate effect of a negative vote in June 2016 would be to trigger the two year negotiation process with the remaining 27 members. The UK can expect few favours from this engagement. There have been some hints that it could be used as a further negotiation and then a second referendum. This is an unlikely scenario. The Prime Minister has already stated that this is a single and not a multiple opportunity process. The anti-EU protagonists would denounce it as contrary to the terms of a first referendum. Lastly, the European Council conclusions indicate that the changes set out in those conclusions would only be implemented when the British government has indicated that the UK wishes to remain a member state. Thus the whole negotiating process would virtually start from zero.

That said, a decision to leave the EU, whilst sad and likely to be overall negative for the UK, will not be the disaster that some pessimists have posited. The UK economy is resilient enough and the country's links, historical and practical, strong enough, that in the longer-term, pragmatic solutions will be found. The nation is at a crossroads as it was in 1973. The European vocation is not acceptable to a large proportion of the population. That is an issue that will not vanish and needs to be resolved.

This is not to deny that there will be consequences that will affect Britain's partners and allies. There will be serious weakening of the EU's capacity to

influence world events with the loss of a permanent member of the UN Security Council and one of its two military powers. Europe's links with the United States, including the pending free trade agreement (TTIP) will be diluted and the US might be tempted to deal more with Germany, as Europe's strongest economy on trade and investment issues.

Paul de Grauwe of the London School of Economics is already on record as saying that the withdrawal of the UK might actually be a boost to European integration (Le Soir 2016: 21). That is indeed possible. However, the danger of British withdrawal is that the major achievements of the EU will start to unravel. There are already signs of this relating to the Schengen area in the wake of the migration crisis.

This whole process is essentially about British exceptionalism. The United Kingdom is at all levels convinced of its profound differences in relation to the European continent and that its legal and parliamentary systems are in basic contradiction to other European countries. The only way that this can be resolved is, according to many in the UK, complete withdrawal and a new relationship with the remaining member states. Mr Cameron has now to convince the British public that his re-negotiation is sufficient to allay the fears of the doubters.

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