

Reform, Renegotiation and Referendum

The UK's Uncertain European Future

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Summary

The UK stands on the brink of a momentous decision: whether to leave or remain in the European Union. Unlike all the other states that have sought late entry to the EU, the UK did not hold a referendum on whether to join in 1973: the decision was taken on the basis of a parliamentary vote. However, in 1975 voters were asked whether they wished to stay in the European Community, and a strong vote to remain was thought to have resolved the matter. However, in 2013, divisions within the Conservative Party led Prime Minister David Cameron to promise to engage in reform of the EU and to renegotiate the UK's terms of membership before holding a referendum on whether to stay in. It was a high-risk, high-stakes proposition. Cameron must persuade his party, the British electorate and his partners in the other EU member states of the merits of his case. The renegotiation covers four areas of concern for the UK: economic governance, competitiveness, sovereignty, and immigration. To some British Eurosceptics, the demands seem woefully inadequate; to fellow EU leaders, they pose significant difficulties. The formal negotiations began in late 2015, after months of exploratory talks with the other member states, and are expected to be completed by the end of February, with the referendum coming as early as June 2016. While those who seek to leave the EU have been honing their arguments at least since the 1993 Maastricht Treaty, just what they envisage leaving the EU to look like is unclear. Brexit could take many forms, representing a journey to an unknown destination.

Introduction

On 10 November 2015, UK Prime Minister David Cameron sent a long-awaited letter to the European Council President, Donald Tusk, outlining the issues he believes need to be resolved before recommending that the UK should remain a member of the European Union. Such a letter is unusual – but so too is the prospect of a member state actively considering leaving the EU.¹ Traditionally, the EU has been seen as a magnet,

attracting aspiring members from across Europe, and even Asia and North Africa. The fact that a long-standing member is now thinking about withdrawal has caused concern and frustration within the EU. While most of the other 27 member states wish the UK to remain and believe it has a positive contribution to make, they are also frustrated by the UK's repeated attempts to opt out of various aspects of integration. These feelings are compounded by the fears of European leaders that if the UK secures further unilateral 'preferential treatment', as it could be construed, Eurosceptics in their own countries will begin to demand further reforms. Thus, following his re-election as Prime Minister in May 2015, Cameron faced a difficult few months negotiating the reforms he deems necessary for the UK to remain in the EU. Once the outcome of the negotiations is clear, he will have to be able to persuade those who are sceptical about membership – not least in his own party – that the reforms are sufficiently significant to warrant a vote in favour of remaining. He is playing a high-stakes game, and the eventual outcome is uncertain.

A Reluctant European

The UK's relationship with its European neighbours has been difficult ever since the Schuman Declaration of 1950 heralded the start of what became known as European integration. The Labour Party was reluctant to engage in a 'rich man's club' but the Conservatives also gave it a cool reception. Having rejected the chance of being a founder member, the UK soon recognized the economic success 'the Six' were enjoying while its own economy was failing to thrive. However, two attempts to join were rebuffed by French President Charles de Gaulle; it was only with his departure from office in 1969 that the UK could enter. The Labour government's application of 1967, which was re-opened in 1969, had come from a position of economic weakness rather than a new-found passion for Europe. However, the negotiations were completed by Conservative PM Edward Heath, the most deeply committed 'European' prime minister the UK has seen. Heath rejected the idea of putting the prospect of membership to British citizens in a referendum – as all other would-be member states did, both ahead of the 1972 expansion

¹ True, Greenland left in 1985, having secured home rule from Denmark in 1979.

and all other enlargements.² The Labour Party shifted in an anti-Community direction while in opposition; and in 1974 Harold Wilson fought the two general elections on a promise of giving voters a say on whether to remain in the Community. Previously hostile to the idea of a referendum, which had been advocated by left-winger Tony Benn, Wilson gradually recognized that a plebiscite might be the *deus ex machina* that could hold his party together on this divisive issue.³ First, however, he sought to renegotiate the UK's terms of membership of the Community, which he dismissed as having been 'Tory terms'. While the renegotiation was characterized as 'a cosmetic operation' by one of Wilson's strongest supporters at the time, sometime German Chancellor Helmut Schmidt, it provided enough for the British Prime Minister to recommend staying in the Community. In the subsequent referendum, British voters duly said 'Yes' by a two-to-one majority. The question mark over Britain's relationship had been removed – most assumed for good.⁴

The rise of British Euroscepticism

However, the 1975 referendum did not resolve Britain's thorny relations with the rest of the EU. Within the EU, Britain became known as an 'awkward partner',⁵ while domestically 'Europe' divided first the Labour Party and, from the time of the Maastricht Treaty, the Conservatives. The rise of the Eurosceptic UK Independence Party (UKIP) from the 1990s highlighted concerns over the direction of European integration after the Maastricht Treaty – on which, as usual, British voters had not had a direct say by way of a referendum. For nearly twenty years, party leaders raised the spectre of holding a referendum, whether on entering the euro or ratifying treaties, only to draw back. The continuing rise of UKIP and the growth of Euroscepticism within the Conservative Party, both among the increasingly elderly grassroots members and MPs anxious about their electoral prospects as they watched UKIP's growing electoral progress, needed to be addressed. By the time of the 2010 general election, the Conservatives were committed to a 'referendum lock' before any new powers could be transferred to the EU. Nonetheless, sceptics were bitterly disappointed that no referendum would be held on the Lisbon Treaty.⁶

The 2010 election created an unprecedented peacetime coalition government between the pro-EU Liberal Democrats and the increasingly divided Conservative Party.⁷ Tory backbenchers, furious with a leader who had failed to secure a majority government and thus prevented them from securing the jobs in government to which they aspired, felt at liberty to attack

the Prime Minister on European matters on a regular basis, most notably demanding a referendum on whether the UK should remain in the EU. Ironically, while Cameron personally opposed such a referendum, the Deputy Prime Minister, Liberal Democrat Nick Clegg, had proposed an In/Out referendum at the time of Lisbon Treaty ratification. In office, however, Clegg took the line that there should not be an ad-hoc referendum. The two leaders pushed through the EU Act 2011, paving the way for a referendum the next time there should be treaty reform in the EU – then expected to be a distant prospect. The demands for citizens to have a say did not diminish, and Cameron eventually responded to his party's demands.

The Promise of a Referendum – and of Peace (in the Conservative Party)

On 23 January 2013, Cameron made a landmark speech at Bloomberg in which he outlined his vision of Britain in Europe, highlighting areas which he believed required reform and, most importantly, pledging to hold an In/Out referendum on membership of the EU by the end of 2017, should the Conservatives be returned to power in the May 2015 general elections.⁸ This move appeared to be a master stroke – his backbenchers were delighted that Cameron had made the commitment to hold a referendum, so he could hold his fractious party together. It also gave him the perfect message for the electorate at the 2014 European Parliament and 2015 general elections: 'Reform, renegotiation, referendum: Labour and the Liberals won't give you a referendum; UKIP can't give you a referendum, only the Tories can.' While the issue was obviously more complex than the Tory leader implied, it worked for Cameron for two and a half years: his party held together, Europe did not dominate the 2015 general election and while the results of the European Parliament elections in 2014 were disappointing – UKIP came first with nearly 30% of the vote, albeit on a low turnout – the Tories won the general election by a majority of 12 seats. Cameron was now the Prime Minister of a single-party government. The time had come to deliver on his European policy.

The 'three Rs' had the virtue of simplicity in speaking to the electorate – but the election victory meant that Cameron would now have to articulate what he meant by 'reform' and explain what he hoped to renegotiate before holding the referendum that would decide Britain's future in Europe. The Bloomberg Speech and the Conservative Party Manifesto of 2015 both contain the core of what Cameron hopes to secure from Britain's European partners.

Recognizing the importance of securing support from the other 27 EU leaders before the formal negotiations began, Cameron, along with Chancellor of the Exchequer George Osborne, Foreign Secretary Philip Hammond and Europe Minister David Lidington, began a series of bilateral meetings with colleagues across the EU. By early autumn there was some frustration among the UK's interlocutors, who complained that they did not know what the Prime Minister wanted. Nor were they impressed at the suggestion that they could find the answers to their queries by looking at the Bloomberg Speech or the

2 Norway is the only state to have rejected membership in such an accession referendum – twice.

3 Under the UK's unwritten constitution, Parliament is sovereign, and in 1972 there was no provision for referenda (which are in any case not legally binding in the UK) – they are not legally binding in the UK because *Parliament is sovereign...*

4 See, for example, Harold Wilson, *The Times*, 7 June 1975, reprinted 6 June 2015.

5 The term is widely used, but is most commonly attributed to Stephen George, thanks to his volume, *An Awkward Partner – Britain in the European Community* (Oxford: OUP, 3rd edition 1998).

6 The Conservative Party had been committed to holding a referendum on Lisbon if they took office before the Treaty had come into effect.

7 For a fuller discussion of the development of European policy at the time, see Julie Smith, 'Europe: The Coalition's Poisoned Chalice' in Anthony Seldon and Mike Finn, eds, *The Coalition Effect, 2010–15* (Cambridge: CUP, 2015), pp. 372–98.

8 This became known simply as 'The Bloomberg Speech'. It is available at: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>

Conservative Party manifesto.⁹ That Cameron was reluctant to reveal his hand too early or too publicly was not surprising – this was, after all, a negotiation. However, it was clearly essential that the other 27 leaders as well as the Commission – which would be conducting the formal (re)negotiation – should have a clear indication of what Cameron was looking for. The problem was that he was trying to play a complex multi-level game. He needed to find a package that his European partners could accept, bearing in mind that they also have electorates to whom they are answerable and growing Eurosceptic forces for whom concessions to the UK would provide ammunition for making similar demands for their own countries. At home he needed to present a sufficiently robust package to be able to keep the Eurosceptics in his own party onside, even before he addressed the issue of how to win over the voters. Thus, in the months immediately after the election the aim was to try to ascertain precisely what might be achievable in the EU, and reconcile that with what would be acceptable at home.

By October the demands to know what Cameron wanted were met with a promise to write a letter to European Council President Tusk. The promised letter was sent on 10 November, when Cameron also gave a speech at Chatham House, in which he harked back to his Bloomberg Speech and flagged up the content of the letter to Tusk.¹⁰ For those who had been following the development of his policy carefully, there were few surprises in Cameron's wish list. Four areas of concern were identified:

- Economic governance – in short, an attempt to ensure that non-Eurozone EU members like the UK are not at any disadvantage through being outside the common currency – while this is predominantly of concern to the UK, the quid pro quo is that the UK would not seek to impede the Eurozone from seeking deeper integration;
- Competitiveness – this is part of the UK's reform agenda but wholly in line with the work of the Juncker Commission and thus can be seen as something to benefit all 28, not just the UK;
- Sovereignty – a long-standing concern ever since accession; Cameron's proposals include increased powers for national parliaments, full implementation of subsidiarity and, most controversially in this area, agreement that UK should no longer be bound by the concept of 'ever closer union';
- Immigration – by which is meant limiting access to benefits for EU citizens moving to the UK under free movement rights.

The contents of the letter were immediately made available and presented to the House of Commons by Europe Minister Lidington. Eurosceptic Tory MPs were underwhelmed: 'Is that the sum total of the Government's position in this renegotiation?' wondered Bernard Jenkin, while veteran Chair of the House of Commons European Scrutiny Committee, Sir William Cash, called it 'a pig in a poke'.¹¹ Meanwhile, Cameron's European

counterparts raised concerns that some of the demands would be very difficult to achieve. The respective reasons of the two groups illustrate the fine line Cameron must walk to secure Britain's future in the EU – assuming, as most do, that he personally does wish Britain to remain in a reformed EU. The previous months of discussions were termed 'technical discussions' in Cameron's letter to Tusk, intended to pave the way for formal negotiations leading to an agreement at the 18/19 February European Council meeting and a referendum in mid-2016.¹²

The Referendum

While the referendum does not formally need to be held until 31 December 2017, political and logistical reasons necessitate its being held no later than spring 2017: the UK is due to hold the rotating presidency of the EU in the second half of 2017, and elections are due in both France and Germany. While a referendum could technically be conducted during the Presidency, this is seen as undesirable. The UK government also appears keen to hold the referendum by the end of June 2016 if possible, to avoid a recurrence of the 2015 migrant crisis affecting public opinion. Agreement on the reform and renegotiation parts of the 3Rs would technically give sufficient time for this to happen, according to the rules laid down in the European Union Referendum Act 2015, which received Royal Assent on 17 December 2015. Failing that, September 2016 would be the most likely alternative date.

The referendum question will be: 'Should the UK remain in the European Union or leave the European Union?' – following advice from the Electoral Commission that this would be the most neutral wording, least biased towards either remaining or leaving. Fairness and neutrality were key issues raised by Eurosceptics when the legislation passed through Parliament, as they recalled the 1975 referendum, which they believed had not been fair. Similar concerns were raised over the proposed funding for the referendum, which sceptics argued was skewed towards those who wished to remain – although it appears that those seeking to leave are already well funded, if the constant flow of media stories is to be believed. The Electoral Commission is expected to designate two umbrella organizations, one for the Remain side and one for the Leave side, which will receive £7m each of state funding as well as certain broadcasting and other rights.¹³ There are numerous groupings on both sides of the argument, but those seeking to remain have broadly coalesced around Britain Stronger in Europe (BSE), which is expected to be the designated Remain body. The Leave side appears more divided, as two rival groups, Vote Leave and Leave.eu, vie for support and money. If they cannot decide between themselves which should lead the Leave campaign, the Electoral Commission has the power to decide.¹⁴

Key campaign issues will include questions of sovereignty and borders, the economy and security, as well as Britain's place in the world. UKIP especially is keen to stress the importance

9 These points were raised in numerous off-the-record meetings with politicians and officials from the UK, other member states and the Commission in September and October 2015.

10 Cameron's letter to Tusk is available on-line at : https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf. His speech at Chatham House is available at: <https://www.chathamhouse.org/sites/files/chathamhouse/events/special/20151110DavidCameron%20%28NEW%29.pdf>.

11 House of Commons Hansard, 10 November 2015, col. 236 and col.229.

12 There was speculation in mid-January that an additional summit could be held later in February if a final deal had not been ironed out by 19 February.

13 The formal rules are outlined in the Schedules of the European Union Referendum Act 2015.

14 The divisions across the parties were highlighted by the fact that UKIP leader Nigel Farage supports Leave.eu, while the party's sole MP favours Vote Leave.

of the UK's links with the Commonwealth. However, while the offer of the Remain side is quite clear – the status quo, plus or minus – that of the Leave side is less so. Would the UK join the European Economic Area and take on the 'fax democracy' that Norway has?¹⁵ Or a series of bilateral agreements within the European Free Trade Agreement alongside Switzerland? What 'leave' means has not been defined, and has been deemed a leap into the unknown. The government and many pro-Europeans argue that it is for those who seek to leave to explain what it would mean, believing that their difficulties in doing so would help the Remain side. Yet such a move could increase the risk of misinformation during the campaign, if those seeking to leave overstate the options available and those advocating remain overlay the negatives.

The ambiguity comes in large part precisely because no state has ever triggered Article 50, the provision introduced by the Lisbon Treaty under which withdrawal can be negotiated. By definition the negotiable outcomes cannot be known until Article 50 is triggered, *after* a vote to leave, and there are no precedents that can be followed. Jean-Claude Piris has indicated there are seven possible alternatives to full membership, none of which would give the UK unfettered access to the EU market without considerable costs – including 'continued budget contributions, continued free movement of labour, and continued supremacy of EU law over British law in the single market'.¹⁶ One final area of uncertainty relates to Scotland. The Scottish National Party, which is deeply committed to keeping Scotland in the EU, has indicated that it might call for a second Scottish independence referendum, should the outcome of the EU referendum be for the UK as a whole to withdraw from the EU.¹⁷

15 Jens Stoltenberg used this term over a decade ago and while the fax may have been replaced by email, the concept persists. See Charlemagne, 'The Norwegian option', *The Economist*, 7 October 2004.

16 Jean-Claude Piris, *If the UK votes to leave – The seven alternatives to EU membership* (London: Centre for European Reform, 2016).

17 The first such referendum was held in September 2014. It was expected to resolve the matter for a generation; as with the 1975 referendum, it did not put paid to the debate.

Conclusions

As David Cameron moves to conclude his reform and renegotiation with EU partners he faces a party deeply divided over the EU. He has asked MPs and MEPs to remain silent on whether they wish to remain or leave until after he has completed the negotiations. Cameron's hope is to secure a deal good enough for him to be able to recommend that the UK should remain in the EU, but he has repeatedly said he 'rules nothing out' – taken to mean that if the deal is not good enough he could recommend leaving. Few imagine this will occur. The expectation is that, like Wilson before him, Cameron will come back and claim a good deal for the UK. At that point MPs and even ministers will be free to campaign as they wish, since Cabinet responsibility will be waived. Yet even before the negotiations are complete, some have begun to argue the case for remaining, while others have announced they have given up on Cameron's negotiations and will campaign to leave. Myriad 'remain' and 'leave' campaign groupings are appearing. Some, such as Labour Leave or Conservatives for Britain on the 'out' side and the Conservative's European Mainstream on the 'remain' side, reflect the opinions of members of just one political party; others are working on a cross-party basis to ensure greater traction for their case. The Liberal Democrats as a party are strongly in favour of remaining, while the Labour Party's position is one of remaining in order to reform the EU (the position of their new leader, Jeremy Corbyn, is understood to be similar to that of Greece's Syriza: pro-Europe, anti-austerity).

Ultimately, it is Cameron's Conservative Party that will be most deeply divided on the issue. The promise of reform, renegotiation and a referendum offered a short-term opportunity for Cameron to hold the party together. However, the result may see both his party and country split, should he not manage to secure the deal he needs, or win the referendum.



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