

What does the UK want from an EU renegotiation, and what terms can it expect?

John Bruton

7 January 2014

I recently took part in a debate in London organised by the think tank, *Open Europe*.

The debate first examined the issues that might arise during a renegotiation of the United Kingdom's terms of membership of the European Union. Discussions then turned to the terms the UK might achieve if, in a referendum on the results of such a renegotiation, voters in the UK decided to withdraw from the EU.

These questions will loom large if the Conservative party wins an overall majority in Parliament, which could happen after the 2015 general election, or after some subsequent general election, unless the Conservative party changes its policy. This is likely to be a live issue for many years to come.

The issue could also be precipitated if the EU itself has to revise its treaties. Treaty revision would require the consent of the UK. Any UK government will be under pressure to use that treaty negotiation to press for the UK's renegotiation agenda, which is partly why many EU leaders are unwilling to attempt any further treaty change. Internal UK politics could thus become a paralysing force on the politics of the entire European Union.

The only place in the EU where the implications of a UK renegotiation or withdrawal are being debated at all is in the UK itself. That debate is narrowly focused on UK concerns, and takes little account of the effect on the 27 other member states of the EU, including on Ireland, of the various UK renegotiation or withdrawal scenarios.

Other EU leaders appear to have taken a vow of silence on the UK's internal debate, even though it is one in which their own electorates also have a vital interest. Understandably, they do not wish to aggravate UK public opinion, which might resent 'foreign' intervention in what would be construed, inaccurately, as a purely 'domestic' UK matter.

The downside of this approach is that UK public and media opinion may develop unrealistic expectations of the terms it could achieve in any renegotiation, leading to disappointment, and consequently, increased support for outright withdrawal. In fact, EU countries are already so integrated with one another that what the UK is likely to request is in fact a domestic issue for all members.

John Bruton is Former Prime Minister of Ireland and member of CEPS Board of Directors.

CEPS Commentaries offer concise, policy-oriented insights into topical issues in European affairs. The views expressed are attributable only to the author in a personal capacity and not to any institution with which he is associated.

Available for free downloading from the CEPS website (www.ceps.eu) • © CEPS 2014

The UK needs to take account of opinion in other EU states. The consent of a majority of the other EU states will be needed if

- a renegotiation is to be concluded to the satisfaction of the UK, or
- if the UK is to withdraw from the EU, a majority among the other EU states would also be needed to agree the terms of a new EU relationship with the UK, to allow, for example, continued privileged access for the UK to the EU Single Market (e.g. for financial services).

Neither of these eventualities can be taken for granted.

The first question the UK should ask itself is whether it is in its national interest that the EU itself remains a viable and confident institution, which can make decisions with reasonable speed, once the various scenarios have played out.

The precedent of an EU member state achieving preferential terms – because of a threat of withdrawal from the EU – could corrode mutual confidence among the remaining 27 members. One has the sense that some in the UK do not care about this; others have not thought about it, and others would actually be happy if the whole process tore the EU apart.

My own view is that, whether it is a member itself or not, the UK has a vested interest in the European Union remaining effective. An effective EU keeps Europe at peace, and creates a single open market that is good for British trade. The UK would not sell as much in a Europe that had reverted to 27 different markets with 27 different currencies. An EU that could not make decisions because it is paralysed by fear about who might be next to follow the UK out the door would not be good for Britain.

Furthermore, some of the likely UK proposals in a renegotiation would undermine the effectiveness and stability of the EU in an even more direct way.

One such proposal is a so-called Red Card, whereby a minority of national parliaments could veto an EU law, even though that law

- had already been passed by a majority in both the Council of Ministers, where all states, including the UK, would have had a vote, and
- has been passed by a majority in the European Parliament, where all states including the UK have directly elected MEPs.

This idea of a Red Card has won support from the British Foreign Secretary and even from some members of the Labour Party.

The ‘Fresh Start Group’ of 100 Conservative MPs has gone further, by saying that an unspecified group of national parliaments should be able to repeal existing EU laws, and bypass the European Parliament and the EU’s existing decision-making structures.

This Red Card would paralyse EU decision-making in ways that might not suit the UK itself. It could also be used by others to block the very measures that the UK wants, such as the liberalisation of the services market in the EU.

A provision whereby shifting majorities among national parliaments could bypass the EU’s democratic decision-making procedures, and unilaterally repeal EU laws and agreements, would undermine the stability of the EU Single Market. It would become an instrument for reopening long-settled compromises on which the EU Single Market is based; making them subject to populist pressures on an ongoing basis.

Both these proposals would require treaty change, because the role of national parliaments in the EU process is defined in a protocol to the existing treaties, and a protocol has the same

legal status as an article in the treaties themselves. To change the protocol in question, each of the 28 member states and the European Parliament would have to agree.

Another likely UK demand would be to opt out of having the European Court of Justice as the final adjudicator on disputes concerning the meaning of EU agreements in the fight against crime. The UK is likely to demand that these issues be adjudicated in national courts, which could mean 28 different interpretations, and many new loopholes through which well-advised criminals could evade justice.

If the UK electorate is not satisfied with the terms offered to keep the UK in the EU, and votes that the UK should withdraw from the EU, a new negotiation would start. The purpose of this would be to decide on the terms under which the UK, outside the EU, would have access to the EU for its people, goods, and services. This second negotiation would have to be concluded within two years.

It would be conducted under Article 50 of the EU Treaty, which requires a qualified majority in the European Council and a majority in the European Parliament to agree the terms to be granted to a country withdrawing from the EU. It is likely that such terms would include a continuing financial contribution to the EU budget, in return for UK access to the EU Single Market.

In the event of no agreement being reached within the two-year deadline, the UK would be out of the EU, and automatically subject to restrictions and tariffs on its exports of goods and services to EU countries. Customs posts would have to be reintroduced at the border in Ireland and at cross-Channel ports.

Furthermore, if the UK, then outside the EU, wanted to restrict immigration from the EU, it would have to introduce passport controls at the Irish border; a measure that would undermine the work done so far to promote peace and reconciliation.