

## Cameron's reality check on Europe

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Ever since Prime Minister David Cameron made his major speech on Europe on 23 January 2013, in which he argued for some kind of new deal between the UK and the EU, the rest of the EU as well as the British public have been wondering what he would actually propose in operational terms.

On 15 March 2014, the Prime Minister offered at least an interim reply to these questions in an article in the Daily Telegraph newspaper.

The Prime Minister gave the overall impression that he is not now heading towards making an impossibly difficult list of demands. On the contrary, an informed and moderate realism seems to be in the making. The package outlined in this paper could be sold in Brussels. There would then have to be a robust communications campaign to sell it to the British public.

This paper extracts from the Daily Telegraph article the main ideas that the Prime Minister advances. In all, 10 propositions are identified, presented in the precise language used, followed by some appraisal. The article has not attracted so much attention, mainly because its content is not particularly sensational, but that is its real importance and quality. It points the way towards resolving what otherwise would mean a huge political crisis for the UK and the EU.

### 1. ***"No to constant flow of power to Brussels. Powers flowing away from Brussels, not always to it."***

Here the language is very loose. There is no specific talk about repatriation of EU competences, and quite reasonably in view of the evidence being collected under the government's 'Balance of Competences Review', launched by the coalition government already in July 2012. This comprehensive review of the EU's competences was intended to throw up evidence on where and how the competences of the EU should be modified, with some initial supposition that there should be repatriation of various EU powers.

**This paper is part of a series of contributions to a CEPS-EPIN project entitled "The British Question and the Search for a Fresh European Narrative". It is pegged on an ambitious ongoing exercise by the British government to review all the competences of the European Union with the aid of evidence submitted by independent stakeholders. The intention is that this should provide a basis for informed debate before the referendum on the UK remaining in the EU or not, which is scheduled for 2017.**

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**EPIN Papers present analyses of key issues raised by the debate on the political integration of Europe. The European Policy Institutes Network (EPIN) is a network of think tanks and policy institutes based throughout Europe, which focuses on current EU political and policy debates (see back cover for more information). Unless otherwise indicated, the views expressed are attributable only to the author in a personal capacity and not to any of the institutions with which he is associated.**

This exercise is now almost half completed, with 14 out of 32 programmed sectoral studies published.<sup>1</sup> These very thorough studies have so far revealed no case for repatriation of competences at the level they are defined in the treaties, and on the contrary and perhaps to the Prime Minister's surprise, they produce a widespread finding that the EU's competences are 'about right'. There is much detail in the exercise of these competences that could and should be improved, but that is a matter for the ongoing business of the institutions and member states, rather than for renegotiation by a single member state, or revision of the treaties.

However, as regards the fear of a 'constant flow of power to Brussels', the Lisbon Treaty may be viewed as a reassurance, in drawing the line on the definition of EU competences, certainly for the foreseeable future. The most likely exception concerns the governance of the eurozone, but as the new banking union agreement reached in the European Council on 21 March shows, this can be done through an inter-governmental agreement outside the EU treaties. There are already mechanisms for protecting the rights of non-eurozone member states, and the banking union will be open to non-eurozone member states to opt into if they wish. Cameron wants a more flexible Europe, and here he can see it happening.

A more precise analysis of flows of power has to take into account that most EU competences are 'shared' with member states, and it is quite an open matter whose 'share' of effective power may grow or decline over time. Member states are free to develop their own policies under shared competences as long as they do not contradict EU law. Protocol 25 of the Lisbon Treaty puts strict limits on the growth of EU action in the area of shared competences.<sup>2</sup> Under the category of 'parallel' competences, the member states are entirely free to develop their own policies.

## **2. “No to ever-closer union”. “...dealing properly with the concept of ‘ever closer union’”.**

This duplicates the first point as regards the flow of power. If the fear is that the EU is moving continuously in the direction of a federal and even ultimately as a nightmare case into a unitary state, there are adequate safeguards against this happening. New treaties have to be agreed by all member states and ratified by their parliaments, and the huge difficulties in completing the ratification of the Treaty of Lisbon showed that this is a real safeguard.

The expression 'ever-closer union', however, is not an operational term in the treaties. There is thus no operational point in proposing a treaty change to delete this, quite apart from the fact that it would be most divisive to propose doing so.

Nevertheless, 'ever-closer union', being a vague expression, can be viewed as a much broader idea than a matter of political competences. It can be viewed as a matter of societal tendencies, with the lives of much of the population increasingly acquiring European dimensions, with professional mobility and networking, studies away from the home country, retirement locations, secondary residences, mixed families, etc., all of which contribute to the evolution of a sense of European identity alongside national and regional identities. Many people would regard such tendencies as corresponding to their personal interests or sympathies, leaving it to polemical nationalist politicians to rail against. There is no way of defining a political act to

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<sup>1</sup> For a review of the first set of studies, see M. Emerson and S. Blockmans, "British Balance of Competence Review, Part I: 'Competences about right, so far'", CEPS/EPIN Working Paper No. 35, October 2013.

<sup>2</sup> Numerous protocols and declarations attached to the Lisbon Treaty register the assurances for the UK and other member states against an incremental creep of competences by the EU, including protection of UK opt-outs.

stop such tendencies within the EU, except by secession and withdrawal from the four freedoms, especially the freedom of movement of people.

If the idea is to 'deal properly' with the concept, the answer would indeed be to interpret it more as a matter of natural societal evolution that can be regarded with sympathy, rather than a matter of constitutional change.

### **3. “National parliaments able to work together to block unwanted European legislation.”**

The Treaty of Lisbon has two Protocols intended to help national parliaments participate in the EU's political and legislative processes, and in particular to submit reasoned opinions on proposed EU laws that are deemed to offend the principle of subsidiarity. Under this so-called 'yellow-card' system, a minimum of one-third of national parliaments may require a draft law to be reviewed by the Commission, which must then decide to maintain, amend or withdraw the draft. This provision has so far only been used on a very small number of occasions, but it could be used more actively. The idea has been floated that this should become a 'red-card' system, with national parliaments able to veto laws that their governments have already decided upon. But there are constitutional objections to enabling national parliaments to overrule through a second-track procedure what their governments, which are accountable to them in any case, have already decided they want. The search for practical ways to enhance the engagement of national parliaments in the EU's legislative processes is a widespread concern, and efforts have been going on for many years to find solutions. Satisfying progress, however, is proving elusive. Of course national parliaments have the natural role of scrutinising EU legislation through their own work at home, which some do more impressively than others, with the House of Lords EU Scrutiny Committee having established a notably respected role for the quality of its reports.

### **4. “Businesses liberated from red tape.”**

The UK government submitted in October 2013 a list of 30 priority points to 'Cut EU red tape', originating from a business task force initiated by the Prime Minister.<sup>3</sup> This list bears some comparison with a compilation of 54 action points drawn up by the Dutch government in June 2013.<sup>4</sup> The subject was put on the agenda of the European Council in October 2013, with conclusions welcoming the Commission's activity "to alleviate the burden of legislation through the Regulatory Fitness programme (REFIT), inter alia through simplification of existing EU law, by withdrawing proposals that are no longer needed and by repealing legislation that is out of date ... It welcomes the steps taken by the Member States and the EU aimed at better identification of excessively burdensome regulation... The European Council looks forward to agreeing further steps in this direction at its June meeting and will return to the issue annually as part of the European Semester".

This is to say that the quest to cut EU red tape is on the agenda of the EU institutions, with one specific programme (REFIT) designed more broadly to monitor and improve the quality of EU regulations. The Prime Minister has put this issue very high on his European agenda. This connects to a degree with widespread feelings in other member states, but with a caution. A sense of proportion is needed in relation to other European priorities, bearing in mind also the importance of national regulatory burdens, and the outcries from public opinion whenever

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<sup>3</sup> "Cut EU red tape – Report from the Business Task Force", document distributed by the UK to the European Council, October 2013.

<sup>4</sup> See M. Emerson, "The Dutch Wish-List for a Lighter Regulatory Touch from the EU", CEPS Commentary, 1 July 2013.

public health or safety standards are found to have been inadequate. Progress will be difficult to measure.

**5. “Open up free trade with North America and Asia”. “Yes to turbo-charging free trade.”**

No problem, this is pushing against an open door. As for North America, the EU has recently completed a comprehensive free trade agreement with Canada, and is negotiating with the US over the proposed Transatlantic Trade and Investment Partnership (TTIP). As for Asia, the EU has a comprehensive free trade agreement with Korea, and is actively negotiating with Japan, India and several ASEAN states.

**6. “Our police forces and justice systems able to protect British citizens, unencumbered by unnecessary interference from the European institutions, including the ECHR.”**

The point here is really about some controversial (in the UK) case judgements of the European Court of Human Rights (ECtHR) in Strasbourg at the Council of Europe, which of course is not an EU institution and not to be confused with the Court of Justice of the European Union. The wording above is therefore misleading in implying that this is an EU issue, with the ECHR as an adjunct. The UK’s opt-out from EU Justice and Home Affairs legislation, and selective opt-back-in to favoured items, reinforces the point that there is nothing here to renegotiate with the EU. So the whole issue is basically irrelevant to the UK’s relations with the EU. In addition the UK secured, under Protocol 30 of the Lisbon Treaty on the Charter of Fundamental Rights of the EU, the exclusion of the competence of the European Court of Justice to make rulings that would be inconsistent with the UK’s own conception of fundamental freedoms.

It remains to be seen what proposals the UK might have for the European Convention of Human Rights and the work of the ECtHR. Some Conservative Party politicians have been advocating withdrawal, which would be seriously damaging for the human rights work of the Council of Europe and for the reputation of the UK as promoter of human rights in the wider European space. Kremlin propagandists would enjoy that tremendously.

**7. “Free movement to take up work, not free benefits.”**

EU legislation assures freedom of movement, with stays of up to three months not requiring any formalities beyond presenting an ID document upon arrival in the UK (as a non-Schengen state).<sup>5</sup> But EU citizens only have a right to residence in another EU member state beyond three months as long as they have a genuine chance of finding employment, or are outside the labour force as students or pensioners. For three months the migrant can be excluded from social security benefits, as long as they are not seeking employment. If they are seeking employment, they cannot be excluded from out-of-work benefits. However the right to residence can be denied, and the individuals required to leave the country after three months, if the authorities judge that the individual has no genuine chance of finding employment. There are examples in Belgium today of unemployed persons from other EU member states being ordered to leave the country under these conditions.

The issues at stake here in the British case are controversial because, in contrast to the intensity of much political argument, there is scant evidence in practice of the so-called ‘benefits tourism’. For this reason the report due in the Balance of Competences Review on intra-EU

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<sup>5</sup> For a more thorough account, see Elspeth Guild, “Cameron’s Proposals to Limit EU Citizens’ Access to the UK: Lawful or not, under EU rules?”, CEPS Commentary, 29 November 2013.

migration has been delayed, with the Liberal Democrat coalition partner arguing that there was insufficient evidence for certain arguments being advanced by the Home Office.

However the political concerns over such questions are shared in several other member states. At the practical level there is a considerable margin of discretion in the hands of national authorities to judge whether in specific cases the individual has a 'genuine chance' of finding employment. Other conditions in the administration of social security systems are also open to varying degrees of strictness.

Given that the media-hyped concerns over Bulgarian and Romanian immigration following the lifting of transitional restrictions on 1 January 2014 proved to be a false alarm, and that the evidence of 'benefits tourism' is thin, it is possible that this whole debate will become more pragmatic with a fine-tuning of reasonable solutions, for which the variables exist consistent with EU law, or possibly with some adjustments of existing legislation.

The conclusion here is that pragmatic adjustments to national practices and EU policies should be able to accommodate the legitimate concerns of the UK and other member states.

#### **8. *“Support for continued enlargement of the EU to new members, but with new mechanisms in place to prevent vast migrations.”***

The precise conditions for future enlargements should be negotiated when the time comes. Bulgaria and Romania had to wait seven years, from 2007 to 2014, before the transitional restrictions on movement of persons came to an end. As remarked above, the fear that there would be 'vast migrations' of Bulgarians and Romanians after 1 January 2014 proved to be a false alarm. The most recent enlargement, with Croatia's accession in July 2013, needed no special provisions and there has been no evidence of any 'vast migration'. The next most plausible accession candidate would be Serbia, which is likely to be similar to the Croatian case, in which case there would be no problem. The Turkish case would be much more important, and the prospect of Turkey profiting from free movement within the EU is a major reason why various member states have brought the accession negotiations to a standstill. If the negotiations were activated on the free movement of persons chapter, the UK would have every opportunity to propose safeguards against 'vast migration', and they would not be alone. If Ukraine were a candidate for accession the same issue would arise, but that prospect is too remote to be taken up now.

In conclusion, the UK will have every opportunity, along with other member states, to propose safeguard measures to prevent 'vast migrations' for future enlargements of the EU as and when this might become relevant.

#### **9. *“No to the Euro, to participation in Eurozone bailouts ...”***

No problem, the UK has its opt-out.

#### **10. *“...or notions such as a European army.”***

No problem. This is simply not on the agenda.

## Conclusions

The Prime Minister's initial speech on Europe of January 2013 was full of radical rhetoric for renegotiating the EU's relationship with the EU, handing power back to the national level and reforming the EU itself. But it was very short on operational propositions. Nobody could know what he really wanted beyond general emotional aspirations, and indeed it seems that the Prime Minister himself did not know. His article in the Daily Telegraph of March 2014 shows where his thinking has since then got to, with the aid of his government's 'Balance of Competences Review' and numerous meetings with other European leaders. Reading between the lines, it is evident that the case for repatriation of competences could not be supported either by the objective findings of his government's review, or from conversations with his colleagues in the European Council. This has left his agenda to be recomposed with a combination, on the one hand, of a number of rhetorical propositions that do not amount to operational issues at all, and on the other hand, a number of concerns that are shared quite widely by other member states and are subjects of work in progress. All of this means that the Prime Minister seems to be on a course that will not risk hitting a brick wall of rejection by his colleagues, but neither will the likely outcome appear impressive in the rough marketplace of British public opinion.

### **Wrap-up: Responses to the ten concerns of the Prime Minister**

In two cases (1, 2), there are robust safeguards against the concerns.

In two cases (9, 10), the hypothetical concerns do not exist in reality.

In one case (5), actual EU policy clearly goes in the desired direction.

In one case (6), the concern is largely irrelevant to the EU.

In four cases (3, 4, 7, 8), the concerns are widely shared among other member states, but possibly with less intensity, while in all of these cases there is work in progress by the institutions. Solutions can be found.