

## Why trying to keep the Germans close on EU competences is risky for Britain

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If Britain is to be successful in winning over Germany on EU reform, then it needs to understand how Germany's federal system, with its intricate balance of competences between the various levels, is an integral part of modern Germany and key to German thinking on Europe.

On 3 October 2013, Germans once again commemorated their country's unification. Perhaps to the surprise of outsiders, the official celebration was not held at the Brandenburg Gate in the capital Berlin, the powerful symbol of the peaceful revolution in 1989. Instead, President Joachim Gauck and Chancellor Angela Merkel together with dignitaries and citizens from across the country were hosted by the minister president of the federal state of Baden-Württemberg, one of Germany's southern economic powerhouses.

Interestingly, Winfried Kretschmann, the first Green minister president ever to lead Baden-Württemberg, and then also the president of the Bundesrat, the legislative chamber where the federal states assemble, used his welcome speech not only to evoke the memory of German reunification, but to talk about Germany's federal order. Time was not abundant, with a slot of 10 minutes or so given to the host before the German President took the stage (whose [speech](#) makes for a most interesting read for Germany's partners in Europe and elsewhere). Minister President Kretschmann reminded his audience and those in the country watching and listening that it was an ongoing task for politicians to figure out the right balance between the central power of the federal government and the rights of the federal states. Who does what – and who pays for what?

Why do I make this point? Talking about the balance of competences in this decentralised state has an important place in the German mainstream political discourse. It has such an important place that the minister president felt his short time was best used by addressing this very issue on Germany's national holiday. Talking about 'competences' is a perfectly normal pastime for politicians, especially in the federal states. And it is a subject of often fierce controversy. The German public has grown used to (and a bit tired of) hearing of yet another commission convened to disentangle the messy mix of competences; of wealthy federal states accusing the less-affluent ones of bad management and threatening to cut subsidies; and of different educational systems making mobility sometimes difficult and unattractive for families.

The European Union, then, has added yet another layer to the German balance of competence debate. So much so that the German federal states successfully fought for the introduction of an article into the

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German Constitution in the early 1990s that gave them a clear say in Berlin's European policies and the further integration of Germany into the European Union. A decade later, during the European Convention in 2002-03, the German federal states led the debate over introducing a catalogue of abstract competences similar to the German Constitution into the EU treaties. With the Lisbon Treaty, these areas of exclusive, shared, supporting, supplementing and coordinating competences have become part of the European Union's legal order.

Needless to say that, both within Germany and with regard to the Europeanisation of its federal order, the question of how to find the right balance in this multi-level system is far from being resolved. Governments, parliaments or constitutional courts frequently address the principle of subsidiarity, which gives the level of government suited best the right to legislate. For Germans, proposals for the future of Europe can often only hope to secure political support if they include discussion about competences or federalism (which for Germans means decentralisation and therefore has an overall positive connotation). Germans don't love competence debates as they can be messy, but they are more than accustomed to engaging in them. The level of knowledge about competences in this country, with its history of a patchwork of fiefdoms until it became a unified state as late as 1871, is something to keep in mind for those trying to understand the European Union's competence order.

Indeed David Cameron did reach out to other EU capitals when the balance of competence review was launched – but Berlin drew the shutters down. It is not difficult to understand why. While there is indeed a great deal of expertise here and Germany in general is open to debating competences, the British competence agenda is considered an exercise driven by mere self-interest with the aim of putting together a shopping list for London's desires to renegotiate its relationship with the EU.

Germany's understanding of EU competences, however, has always been part of a wider EU reform agenda. While the UK government has been trying to demonstrate since the prime minister's speech in January 2013 that it does have a wider agenda – competitiveness, deregulation, democracy, to name the most important pillars – this is not how London's motivations are understood. Instead the British debate is seen as merely driven by domestic concerns – which German policy-makers have stated they cannot and do not want to interfere with.

Recently there has been speculation in the British press prompted by an [interview that Chancellor Merkel gave 13 August 2013](#) in which she talked about eurozone reform and the future institutional order of the EU. Despite the then ongoing federal election campaign, this hour-long summer interview was largely ignored in Germany. British commentary, however, found it to be evidence of the 'Britishisation' of Germany's EU agenda. The fact that the Chancellor spoke about "competences" was taken as proof that David Cameron's speech had made a connection with the Chancellor's thinking! And, so goes the spin, other parts of Europe, notably the Dutch, had also been recruited to the cause. These signals were taken as clear signs that London is making progress in beginning a process that it vitally needs if it is to have a chance to re-negotiate the balance of powers with Brussels.

From Berlin's perspective, this looks rather different. So what did the German Chancellor actually say? The competence question was part of a wider conversation on the reform of the European Union. The Lisbon Treaty, Angela Merkel said, gave the European Parliament a lot more competences, which was, she stressed, "the right thing to do". But then, she continued, there needed to be a debate in the run-up to the European Parliament elections in 2014 about the right balance of competences within the Union. How many competences still needed to be transferred to Brussels? Might one envisage a situation in which competences were even transferred back ("Was wird man in Zukunft noch an Kompetenzen nach Europa geben, kann man vielleicht auch eines Tages etwas zurückgeben")? This phrase quite naturally grabbed the attention of British analysts.

Why did Angela Merkel make this point? It is very likely that in a tactical move she was addressing voters of the Bavarian sister party of her CDU as well as potential voters of the new "Alternative for Germany" party. Bavaria, with its successive Conservative governments, has always kept a close eye on the transfer of any competences to Brussels, particularly in areas that Munich managed to keep

away from the federal government in Berlin. And Bavaria was crucial for Angela Merkel's future as Chancellor. Bavaria held elections just one week before the general elections (and thus only a few weeks after the interview was broadcast). The German media largely ignored the competence remark in the days that followed, and those listening to the interview perhaps did not find it an unusual topic to address anyway – why not, in a recurrent “who does what debate” they are so used to hearing.

With Angela Merkel winning the September 2013 general elections, are we now in for a big leap towards competence reform? It is unlikely that the next coalition government will pick up the issue and turn it into the kind of policy that might help London link it to its own balance of competence review and the short-term aim of renegotiating powers. It is however likely that the next government will entertain some thinking and a willingness to talk about the issue as part of a wider and longer-term vision for EU reform. As explained above, this is almost mandatory in the German context. In London, however, the issue is of relevance for the current government's short-term political survival and Britain's EU membership.

Britain should know that trying to keep the Germans close to its bosom on the competence question is risky in two ways. First, Berlin might get annoyed by London going too far not only with its own EU ambitions, but in trying to manipulate public perceptions of Berlin to serve its own agenda. London should not forget the reasons that led Berlin to turn down the invitation to get involved in the evidence-gathering exercise for the UK's balance of competence review. Second, and perhaps more risky, is the possibility that such commentary might provoke some of Germany's leaders to speak out on the competence question and make it clear in the first place that London certainly does not possess the authority or the credibility to frame the debate in this area. There is a German competence debate, but it is a very different one. It has strong roots in the political culture of the country, it has an accepted European dimension and it has always been part of a comprehensive debate on EU reform, which most likely runs counter to London's ambitions. Those suggesting that Berlin is with London on the competence question might want to be careful about what they wish for.

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With the conclusion of the Convention, CEPS and other participating institutes decided to keep the network in operation. EPIN has continued to follow the constitutional process in all its phases: (1) the intergovernmental conference of 2003-2004; (2) the ratification process of the Constitutional Treaty; (3) the period of reflection; and (4) the intergovernmental conference of 2007. Currently, EPIN follows (5) the ratification process of the Lisbon Treaty and – should the treaty enter into force – (6) the implementation of the Treaty.

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