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# Cameron's EU gamble

## Five reforms he can win, and ten pitfalls he must avoid

By Charles Grant

# Cameron's EU gamble: Five reforms he can win, and ten pitfalls he must avoid

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As in 1975, a British prime minister is trying to win a new deal from the EU, before holding an in-or-out referendum. David Cameron will probably achieve reforms in five areas:

- 1) Making the EU more competitive. Everyone will agree on extending the single market into new areas and on the need for better regulation.
- 2) Curbs on benefits for EU migrants. Reforms to Britain's own welfare system will make it harder for EU migrants to claim out-of-work benefits. The rules on payments to migrants' children living abroad may be changed. But Cameron will struggle to curb immigrants' rights to in-work benefits, like tax credits.
- 3) A bigger role for national parliaments. The Commission will find it harder to push ahead with draft laws if national parliaments object.
- 4) Changing the treaties' commitment to 'ever closer union'. Words will be found that allow Cameron to claim that the EU is a multi-currency union.
- 5) Safeguards for the wider EU against the risk of eurozone caucusing. The UK may secure the promise of a new treaty article, greater transparency of Euro Group meetings and a mechanism to allow non-euro countries to delay decisions that they fear may harm the single market.

But even with these reforms, David Cameron will find it much harder to win his referendum than Harold Wilson did in 1975. At least ten things could make victory elusive:

- ★ Cameron's deal will not be dramatic enough to impress many people.
- ★ Divisions in the Conservative Party could derail Cameron's strategy.
- ★ The British brand is tarnished in other member-states, which weakens Cameron's hand in the renegotiation.
- ★ Other EU governments may be less willing to help Cameron than many Britons imagine.
- ★ Rows on migration or a deterioration of the refugee crisis would damage the EU's image.
- ★ So would a worsening of the euro crisis.
- ★ The Out campaigns will be better-funded than the In campaign.
- ★ The Out campaigns have strong arguments that are hard to counter in simple terms.
- ★ The Labour Party is in turmoil and the trade unions have cooled on the EU.
- ★ Britain's business leaders will be less supportive of the EU than they were in 1975.

Cameron is more likely to win the referendum if Britain's European partners give him a couple of reforms that allow him to say the EU will work better for Britain. The most important topic politically is the right of EU migrants to claim benefits. But on substance the key issue for the UK is the need for safeguards to protect the single market and the wider EU against the possibility of harmful actions by the eurozone.

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## Harold Wilson, David Cameron and renegotiation

The parallels between the British renegotiation of 1974-75 and that currently underway are striking. Harold Wilson narrowly won the February 1974 general election, having promised to improve the terms of Britain's membership of the European Economic Community (EEC) and then hold an in-or-out referendum. He had made that promise as a means of holding the Labour Party together, since it was badly divided over the EEC, which Britain had joined in 1973. After a second general election in October 1974, which gave Wilson a stronger position in Parliament, the Labour government began to negotiate in earnest with the other eight member-states. In March 1975 Wilson announced that he had achieved most of his negotiating objectives. He and a majority of his ministers then campaigned for staying in the EEC, while a minority of them fought on the other side. In May 1975, 67 per cent of the British people voted to stay in the EEC.<sup>1</sup>

Once again, a British prime minister has resorted to a referendum as a method for holding his party together – though David Cameron, like Wilson before him, will be able to argue that he is serving the national interest by resolving a difficult issue, of fundamental importance to Britain, for a generation. Once again, a British prime minister is trying to secure a better deal for his country from the other member-states. Once again, that prime minister will – without any doubt – announce that he has won a good deal and campaign for continued membership.

The big difference, however, is that Cameron will find it much harder than Wilson to win his referendum. In 1975, the British people knew that other EEC economies were more successful than their own. But in 2015 the UK is wealthier than most other EU countries and growing faster. In 1975, the entire establishment – the media, business leaders and most mainstream politicians – urged the British people to stay in; the anti-EEC campaign was led by extremists of left and right like Enoch Powell,

Michael Foot, Tony Benn and Ian Paisley. In 2015, though many politicians and business leaders support membership, plenty of senior figures who come across as moderate will be calling for an Out, as will be, probably, significant parts of the media.

Britain's negotiating priorities have of course changed over 40 years. Last time the most contentious issues were Britain's payments into the EEC budget, and access to European markets for New Zealand food. In 1975, the complex formula that was agreed on the budget ended up giving the UK no benefit whatsoever, though New Zealand farmers were happy with what Wilson had won for them. Britain also won reassurances on issues such as the steel industry and regional policy. The substance of Britain's relationship with the EEC was scarcely affected by the renegotiation. But people believed Wilson when he said that he had improved the terms of membership. In 1975, Britain was a deferential country, in which many people were willing to follow what their leaders told them. Today's Britain is much less deferential and its establishment is mistrusted. If Cameron claims that he has transformed the nature of Britain's relationship with the EU, he will be subjected to much more rigorous scrutiny than Wilson faced in 1975.

*“David Cameron will find it much harder than Harold Wilson to win his referendum.”*

This paper examines Cameron's plans and priorities for the renegotiation, and predicts the reforms he is likely to achieve in five key areas; it considers ten obstacles that could prevent Cameron from winning the referendum; and it concludes by asking what, if anything, those outside the UK can do to help ensure a positive result.<sup>2</sup>

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## The British government's plans and priorities

The British government would like to complete most of the renegotiation by the end of 2015, though its officials admit that the process could spill over into early next year. In Brussels, some senior officials reckon that it will take a long time to persuade the 27 member-states to support a deal, and that negotiations may therefore continue until the spring or even the summer of 2016. Cameron has promised a referendum before the end of 2017 and many Whitehall officials assume that it will be held in the autumn of 2016. The case for an early vote is that in 2017 France and Germany will be distracted by

general elections; that in the UK, governments tend to be unpopular mid-term (the more unpopular is Cameron's government, the less likely he is to win the referendum); that deferring the date creates uncertainty for businesses, which may therefore hold back from investing; and that a long renegotiation is unlikely to lead to a better outcome than a relatively short one.

The reform package that Cameron wins is likely to consist of a number of different instruments: decisions of the European Council; promises of future treaty change,

<sup>1</sup>: Stephen Wall, 'Official History of Britain and the European Community, Vol II, From Rejection to Referendum, 1963-75'; Routledge 2014.

<sup>2</sup>: An earlier version of this paper was submitted to the European Parliament's Committee on Constitutional Affairs in September 2015.

perhaps in the form of a protocol; political agreements to modify existing EU laws or introduce new ones; and new laws in the UK to change its welfare system.<sup>3</sup>

Cameron will want to be able to argue that the package is legally watertight. However, the disadvantage of an early referendum is that proposed legislative changes will not have taken effect before the voting happens; it usually takes more than a year for an EU law to be passed (the shortest time possible is around eight months). Anti-EU campaigners will assert that large parts of Cameron's package could unravel, for example due to opposition from the European Parliament.

British negotiators, knowing that decisions of the European Council and promises of future treaty change do not require the Parliament's approval, may try to maximise the use of those instruments. Those in favour of Brexit will claim that commitments to treaty change from Britain's EU partners are not to be trusted. But Cameron will point to the promises of treaty change that EU leaders made after the Danes rejected the Maastricht treaty in 1992, and after the Irish voted No to the Lisbon treaty in 2008; both promises were fulfilled.

Cameron's demands fall into five broad areas:

### 1) Making the EU more competitive.

Many priorities of the current European Commission, led by President Jean-Claude Juncker, fit closely with British ideas on how the EU should be made more competitive. Juncker and his colleagues are seeking to extend the single market into the digital economy and energy; create a capital markets union (so that companies can more easily raise money through EU-wide capital markets, while becoming less dependent on bank lending); negotiate trade-opening agreements with many countries, including Japan and the US; and cut red tape (Commission Vice President Frans Timmermans has killed off about 80 proposals for legislation and is now looking at repealing existing laws that are redundant). One discordant note is that the Commission is reluctant to liberalise European services markets – a big UK priority, given the strength of British services companies – partly because of German opposition.

Most EU governments will be happy to sign up to more single market, more trade agreements and less red tape. Cameron's problem with this competitiveness agenda is that most of the changes he wishes to see are already under way (many British citizens have no idea that the Commission is broadly following a British-driven agenda of economic liberalism, which is one of the reasons why

3: Jean-Claude Piris, an eminent authority on EU law, argues that promises of future treaty change will not work if they contradict the existing treaties. See his paper 'Constitutional pathways: Which institutional and constitutional adjustments for the United Kingdom?' submitted to the European Parliament's Committee on Constitutional Affairs in October 2015. I believe that a protocol consisting of promises to change the treaties could satisfy his condition.

so many French people dislike the Commission). Cameron will need some clever marketing to dress up what the Commission is doing as a British achievement. The EU should consider coming up with something like the 'white book' which in 1986 set out the measures needed to create a single market. The Commission could write a new white book, listing the steps required to create a more effective, better-regulated single market, and the European Council could endorse it. British public opinion is not particularly interested in these competitiveness issues, but business leaders and Conservative politicians are.

*“Of all the subjects covered in the renegotiation, migrants' benefits is the most salient with public opinion.”*

One uncertainty about Cameron's stance is the extent to which he will try to attack 'social Europe'. His backbenchers would like him to roll back the EU's social agenda, for example the directives covering working time and rights for agency workers. British workers are allowed to opt out of the Working Time Directive (WTD) but it remains a big issue for the National Health Service, because some of its workers are not opted out and because the European Court of Justice has defined rest time in ways that are costly.<sup>4</sup> Previous British governments tried to reform this directive and found many allies in the Council of Ministers – but failed because of opposition from the European Parliament. There is no reason to believe that the current Parliament would be much more open to changing the WTD than its predecessors, so Cameron would be well advised not to make a priority of this directive. There are some signs that he understands that if he pushes too hard against social Europe, he may deter Britain's trade unions from campaigning to stay in the EU.

### 2) Reducing the benefits available to EU migrants.

The Conservative manifesto for last May's general election promised to deny EU migrants benefits, unless they had lived in the UK for four years. It also promised to stop the payment of child benefit and child tax credits to migrants' children who live elsewhere in the EU. Of all the subjects covered in the renegotiation, this is the most salient with British public opinion. It is also the subject that causes most anxiety among Cameron's officials. At the time of writing, they cannot see how the prime minister's demands can be reconciled with the EU's treaties and laws, and what is acceptable to Britain's partners. They complain about the – as they see it – unhelpful attitude of

4: Katinka Barysch, 'The working time directive: What's the fuss about?', CER policy brief, April 2013.

the Central and Southern European governments, many of whose citizens have gone to work in the UK.

Concerning out-of-work benefits, British officials believe they can achieve change, though much of it will come through reforming UK rules rather than through EU legislation. Two recent rulings by the European Court of Justice – in the *Dano* and *Alimanovic* cases – make it easier for governments to restrict EU migrants' access to unemployment benefits and other forms of support. And in a third case that is still current, an ECJ advocate-general has supported the UK position – in a case brought by the Commission – that the government should be able to apply a residency test to EU migrants claiming a variety of social benefits. The advocate-general said that although this amounted to indirect discrimination against non-British Europeans, it could be justified by the UK's need to protect its public finances (the ECJ usually but not always follows the views of advocates-general). The ECJ seems to be developing a doctrine that EU migrants should not be able to claim unemployment benefits in a host country unless they have worked and paid taxes there.

Meanwhile, Germany and some governments sympathise with the UK in its efforts to restrict out-of-work benefits to EU migrants. (However, the UK's 'problem' with EU migrants claiming jobseekers' allowance is in fact limited: in 2014 only 4 per cent of claimants of job-seekers' allowance were EU migrants – some 65,000 – though they made up more than 5 per cent of the workforce.)<sup>5</sup>

Cameron's difficulty is that he has made a particular priority of limiting the in-work benefits available to EU migrants, such as tax credits and housing benefit. He has done so because many workers, including EU migrants, receive low salaries that are topped up by the government through such benefits. The EU treaties and existing jurisprudence are clear that on conditions of work, such as tax credits, governments cannot discriminate against EU migrants because of their nationality.

If the UK wants to reduce the tax credits flowing to immigrants, it will need to change its welfare system for everybody, including British citizens – but even that may not suffice if the result is indirect discrimination. In some respects, the government's plan to introduce 'universal credit' – a streamlining of the benefits system which will replace working tax credit, child tax credit, housing benefit, jobseekers' allowance and other benefits with a single credit – could help. Universal credit could be defined as a residence-based rather than a work-related benefit, so that those claiming it – whether British or from other member-states – would have to live in the UK for a certain number of years in order to qualify.

<sup>5</sup> For a detailed analysis of the numbers of EU migrants claiming UK benefits, see Chapter 4 of 'The Economic consequences of leaving the EU: The final report of the CER commission on the UK and the EU single market', CER report, June 2014.

But there are two problems. First, the government would have to accept that British residents returning from overseas would not be able to claim the credit until they had lived in the UK for a certain period. It would also probably have to deny the credit to young UK-based Britons, until they had worked for several years. But the government has not yet ceded the point, since some of its ministers are reluctant to hit British citizens. Second, some people might claim that the residence qualification was indirectly discriminatory, since most non-British Europeans would still find it much harder to claim the credit than the average Briton, and they might therefore take the government to the courts (and ultimately to the ECJ). But although the ECJ has on occasion permitted indirect discrimination, its jurisprudence suggests that it may not want to do so where in-work benefits are concerned. Britain could not be sure of winning such a case in the ECJ unless the EU treaties were modified. But there is no prospect of Poland or other member-states agreeing to change the relevant clauses on discrimination.

*“There is no prospect of other member-states agreeing to change the relevant clauses on discrimination.”*

The British government will also find it difficult, though perhaps not impossible, to curb payments of child benefit to children living in other parts of Europe. The number of children receiving such payments from the UK is relatively small (about 20,000), but parts of the British media have made these payments a politically sensitive issue. EU laws on the co-ordination of social security payments are due for revision in the near future, which may present an opportunity for amending the rules on child benefit. The Commission has been thinking about how the system could be revised. Several North European governments share Britain's desire to limit these payments; Central European states do not. In public, Cameron now talks of lowering, rather than ending these payments, which might facilitate a deal. However, changing the rules would require EU legislation, which would need to pass through a potentially hostile European Parliament.

At various times Cameron has floated another objective which, if he pursues it, should be achievable. He has suggested that people from future accession states should not be able to work in the rest of the EU until the per capita GDP of their country reaches a certain level (say, 70 per cent of the EU average). Since accession treaties require unanimity, Britain could insist on something along these lines, damaging though it would be to its reputation in the Balkans. In any case, several

other member-states would be happy to see Cameron push for this principle.

Whatever deal Cameron can secure on migration, the rules on benefits and tax credits are not the main determinant of how many European migrants head for Britain; much more important is the relative strength of the UK economy and the many job opportunities that it creates. So Cameron will find it hard to argue convincingly that the reforms he has achieved will significantly cut the number of immigrants to the UK. However, he may be able to argue that his reforms will make the rules on welfare for migrants fairer.

### 3) Giving national parliaments a bigger role in policing 'subsidiarity', the principle that the EU should only act when strictly necessary.

The Lisbon treaty established a 'yellow card procedure', whereby if a national parliament thinks a Commission proposal breaches subsidiarity, it can issue a 'reasoned opinion'; if as many as a third of national parliaments do so, that constitutes a yellow card. The Commission must then think again and either withdraw the measure or justify why it will not do so. The national parliaments have twice raised a yellow card in this way; on the first occasion the Commission withdrew the draft law and on the second it did not.

The UK wants to strengthen this procedure: some figures in the British government would like a 'red card' system, giving national parliaments a veto; other ministers would be happy to reinforce the yellow card. The European Parliament, Germany and many federalists dislike these ideas, fearing that they would make it harder for the EU to adopt legislation. They also argue that the role of national parliaments in EU affairs is to hold their own governments to account rather than to meddle in EU legislation, for which, they believe, the European Parliament ensures democratic legitimacy (unfortunately, many national parliaments, including Britain's House of Commons, do a poor job of holding their government to account on EU business).<sup>6</sup> But the UK has allies on this issue, including the Dutch and the Hungarians, and most EU governments seem willing to countenance a stronger yellow card procedure.

For example, national parliaments could be given longer than the current eight weeks in which to issue a reasoned opinion; they would then have more time to talk to other parliaments about whether to launch a yellow card procedure. And there could be an inter-institutional agreement that the Commission would, in normal circumstances, withdraw a proposal after a yellow card was raised; the Commission could undertake to explain

6: Agata Gostyńska, 'A ten-point plan to strengthen Westminster's oversight of EU policy', CER policy brief, May 2015.

7: Some of these ideas are discussed in Jean-Claude Piris's paper 'Constitutional pathways: Which institutional and constitutional adjustments for the United Kingdom?' submitted to the European Parliament's Committee on Constitutional Affairs in October 2015.

itself before the European Council if it wished to maintain the proposal. Another possible change would be to allow national parliaments to raise a yellow card when they considered that a Commission measure had breached 'proportionality' (the treaties' principle that a proposal should not exceed what is necessary to achieve the objectives set out in the EU treaties). The EU could also encourage the idea of a 'green card', whereby national parliaments would club together to ask the Commission to come up with a draft law; Britain's House of Lords EU committee has pioneered this idea, recently working with 17 other parliaments to encourage the Commission to act on food waste. None of these changes require treaty revision, if the Commission is co-operative.<sup>7</sup>

*“Foreign Secretary Philip Hammond has urged the other member-states to accept that the EU is a ‘multi-currency union’.”*

### 4) Amending the treaties' commitment to 'ever closer union'.

The presence of these words in the preamble to the Treaty on European Union has had virtually no practical consequences in terms of EU legislation.<sup>8</sup> But Cameron is determined to fight and win a symbolic battle against these words. He believes that one reason why the British mistrust the EU is the so-called ratchet effect – European integration appears to be a one-way process by which the EU accumulates ever more powers but never loses them. Ever closer union is a symbol of the ratchet effect. This issue may generate much heat in the renegotiation, given the attachment of federalist countries like Belgium to ever closer union.

Britain's partners are unlikely to agree to change the words in the treaties, but they will probably accept a form of words, perhaps in a protocol, that reassures the British. The conclusions of the June 2014 European Council may provide a starting point for an agreement. These said that “the concept of ever closer union allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further.” British officials say these words go in the right direction but do not suffice. Foreign Secretary Philip Hammond has urged the other member-states to accept that the EU is a 'multi-currency union'. That phrase will be too provocative for some, who cherish the treaties' statement that the euro is the currency of the EU. Very clever drafting might be able to give Cameron a symbolic victory that is acceptable to integrationists.

8: The complete phrase is: 'ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen'.

## 5) Ensuring a fair relationship between the single market and the eurozone.

The British government worries that the 19 euro countries may form a caucus within the wider EU. They could act as a bloc in deciding single market laws, since under the Lisbon treaty voting rules that recently came into force, they have a qualified majority. The UK wants to stop the eurozone acting in ways that could damage the market. And it wants to make sure that EU financial regulation does not harm the City of London.

George Osborne, the Chancellor of the Exchequer, is very concerned about the relationship between euro ins and outs. He and British officials worry that in the long term, as the eurozone integrates, its members are more likely to adopt similar policies – and to put the interests of the single currency ahead of those of the single market. British public opinion may not be particularly interested in this subject, but among top bankers, politicians and officials, it matters more than any other dossier in the renegotiation. Bank of England Governor Mark Carney weighed in on this issue in a speech on October 21<sup>st</sup>.

The response of the euro countries is that they disagree on many economic policies and so are unlikely to caucus. But the British point to the example of last July's emergency eurozone summit: in the middle of the night, in order to provide a bridging loan to Greece, the eurozone countries tapped an obscure EU bail-out fund, the European Financial Stability Mechanism. They did so without consulting the euro outs – who contribute to the fund – and despite an earlier European Council decision that the fund should not be used for eurozone bail-outs. In the end, Britain and other euro outs received guarantees that they would not lose out financially. But the episode reinforced British fears of eurozone caucusing.<sup>9</sup> It also worried the Danes and the Swedes. However, most non-euro countries are less worried than the British about the relationship between the ins and the outs. This is because they think that in the long run they may join the euro, and because they do not have a City of London to fret about.

Some of the most senior German officials have little sympathy for the British position. They think the UK's real game is to win a veto for the City of London on financial regulation, which they would strongly oppose. They think this because of Cameron's conduct at the December 2011 EU summit, when he refused to sign the 'fiscal compact' treaty that Germany wanted. He refused because the others would not accept a protocol written by the British Treasury – which had not been shown to other EU governments

9: Charles Grant, 'Could eurozone integration damage the single market?', CER bulletin, Issue 103, August/September 2015.

10: Open Europe blogspot, 'Double majority: The way to avoid the EU becoming a political extension of the euro', July 2013. It is not evident that double majority voting would often help the UK: some of its allies, like Ireland and the Netherlands, are in the euro, while several countries outside the currency, like Poland, have very different views.

before the summit – that would have changed voting rules on some aspects of financial regulation. German officials are still bitter about this episode.

Open Europe, a moderately eurosceptic think-tank, has suggested that extending the 'double majority' voting principle could provide Britain with safeguards against eurozone caucusing.<sup>10</sup> In 2012 the EU decided to apply this principle to the European Banking Authority: a majority of both euro ins and euro outs must approve certain decisions. But Germany is hostile to applying double majority voting elsewhere since, as more countries joined the euro, it would evolve towards a British veto over single market measures. German officials argue that to give Britain such a privileged position would be contrary to the treaties' fundamental principles, such as the equality of the member-states.

*“German officials think the UK's real game is to win a veto for the City of London on financial regulation.”*

Belgium is strongly against the idea of giving non-euro countries safeguards against the risk of eurozone caucusing. But despite the opposition of some member-states, Osborne should be able to gain several safeguards on the ins and outs question. The German finance ministry seems more sympathetic to his position than other departments in Berlin. The Centre for European Reform has suggested a new treaty article, stating that nothing the eurozone does should damage the single market; new procedures to ensure greater transparency in discussions of the Euro Group (the meetings of eurozone finance ministers), so that non-euro countries know what is going on; and the creation of an 'emergency brake' so that any non-euro country which believes that an EU law harms the market may ask the European Council to review the matter, for a period of up to, say, a year. Such reforms are probably feasible.<sup>11</sup>

Could some of these changes lead towards the emergence of a two-tier or two-speed Europe? It is possible that the negotiations on 'ever closer union' and those on 'safeguards for the single market' could coalesce into a review of the overall structure of the Union. At the moment the treaties make virtually no distinction between countries in the euro and those outside. Legally, all member-states bar Denmark and the UK are obliged to join the single currency. In practice, however, a few countries not in the euro, including Sweden, have no

11: Stephen Booth, Raoul Ruparel and Vincenzo Scarpetta, 'Safeguarding the rights of non-eurozone states in a multi-currency EU', Open Europe, September 2015.

intention of giving up their currencies, while most of the other 'outs' are at least a decade away from joining.

As already stated, many EU countries balk at the British proposal for a 'multi-currency union'. However, an embryonic British-Italian initiative seeks to use the reinterpretation of the wording of ever closer union to create the concept of a two-circle EU: the inner core of euro countries would be committed to ever closer union; the outer rim would be freed of that commitment. The advantage of such a scheme could be that, without altering much of substance, it would reassure the British that they would not be dragged by a ratchet effect into an ever more integrated EU. The difficulty with this idea is that it grates against the prevalent ideology of the Brussels institutions – that all the member-states, bar Britain and Denmark, will become ever more integrated.

And, of course, several of the countries not yet in the euro are quite prepared to sign up for greater integration and pooling of sovereignty; they would not want to be seen as part of a 'second division' led by the British. Poland, for example, is very hostile to the idea of a two-circle EU (though the imminent elections could produce a more euro-hostile Poland). But despite the difficulties, this concept has the potential to provide some sort of vision for the future of the EU that is acceptable to both the British and the integrationists.

*“Cameron should not claim that he has fundamentally changed the nature of the beast. Such claims would not be plausible.”*

## Ten potential pitfalls

In 2016 or 2017, the risks of the referendum on EU membership being lost are much higher than they were in 1975. There are at least ten reasons why those who want Britain to stay in the EU should be concerned.

### **(i) David Cameron's deal will not impress many people.**

If the previous section is correct in predicting what Cameron is likely to obtain from Britain's partners, his reforms are unlikely to excite many voters. An enhanced yellow card procedure will not incite millions to march down Whitehall in support of the EU. Nor will new words on ever closer union, safeguards for the single market, reductions in Brussels red tape or curbs on the benefits that EU migrants can claim.

There seems a real danger that Cameron will over-play the importance of his deal. He may do so in an attempt to convince as many eurosceptics as possible to support the In campaign. But if Cameron does claim that he has transformed the nature of the EU, rigorous scrutiny from the eurosceptic press could well expose his achievement as something less than historic. He has hitherto been reluctant to sing the praises of the EU per se, perhaps out of concern not to alienate Conservative eurosceptics (though it was notable that in the House of Commons on October 19<sup>th</sup> his tone on the EU was somewhat positive). If he wants to win the referendum he will need to convince the British that their country benefits from EU membership. He should not waste too much energy claiming that he has fundamentally changed the nature of the beast. Such claims would not be plausible.

### **(ii) The internal dynamics of Conservative Party politics could push Cameron to demand the unobtainable and so derail the renegotiation.**

The depth of the passionate hostility that some Conservative politicians feel towards the EU cannot be underestimated. They care more about this issue than any other, including the unity of their party and their kingdom.<sup>12</sup> Since Cameron became party leader, in 2005, the eurosceptics have learned that, if they badger him on a European issue, he is quite likely to cede ground. He took the Conservatives out of the European Peoples' Party, the most influential political grouping in the EU, in order to placate them. Then he gave them the 2011 EU Act, which promised a referendum on the transfer of any further powers to the EU. And in 2013 he pledged an in-or-out referendum, having previously ruled one out. Then there was the review of EU competences, a civil service-led exercise in 2012-14 that led to the publication of 32 reports on the EU's powers in specific areas, evaluating their costs and benefits to Britain; the conclusions – that most of the things the EU did were broadly in Britain's interests – upset the eurosceptics, leading 10 Downing Street to bury, rather than to publicise the reports.

This autumn, Cameron has ceded ground to the eurosceptics again and again. He accepted that the machinery of the British government should not promote EU membership, that the Conservative Party itself should not take sides in the referendum campaign and that – following advice from the Electoral Commission – the referendum question should be changed to one less

<sup>12</sup>: Some Conservatives are not particularly bothered that Brexit would be quite likely to trigger Scotland's departure from the UK. If the UK overall voted to leave the EU, but a majority of Scots had favoured staying in, the Scottish National Party would have a good reason to hold a second referendum on independence. The nationalists would be more likely to persuade the Scots to back independence on the second attempt.

favourable to the In campaign. The question has changed from 'Should the United Kingdom remain a member of the European Union', which required a Yes or No answer, to 'Should the United Kingdom remain a member of the European Union or leave the European Union?'

Hard-line eurosceptics are becoming highly critical of Cameron for demanding EU reforms that they consider too modest or insubstantial. Until now most of them have stayed fairly quiet, since Cameron's wish-list has (at least officially) not been revealed. But Cameron is now preparing to unveil his negotiating objectives in a letter to Donald Tusk, the President of the European Council. When he does so the quitters will have an excuse to break cover and attack the prime minister for his lack of ambition. They will push him hard to raise the stakes, for example by demanding a restoration of the 'social opt out' that then Prime Minister John Major won in 1991; or by insisting on quotas on the numbers of migrants from EU countries. If Cameron did suddenly try to placate the eurosceptics – for the sake of Conservative Party unity – at the last stage of the renegotiation, by 'pulling a rabbit out of a hat' and placing a radical new demand on the table, his partners would probably rebuff him. Then Cameron would be seen to have failed. It would then be very hard for him to claim that he had won a good deal and fight an effective campaign to keep Britain in.

### **(iii) The British brand is damaged, which weakens David Cameron's hand.**

Many people in Britain do not realise that their country is thoroughly unpopular amongst many of Europe's politicians and top officials. The anti-EU rhetoric of some British politicians – and of the tabloid press – has damaged Britain's soft power. The internal dynamics of the Conservative Party, as described above, have the potential to further sully Britain's reputation. The more unpopular the British become, the less willing will be some governments and people in EU institutions to help solve Cameron's problems in the renegotiation.

Some of the xenophobic comments about EU migrants in recent years have been harmful, particularly in the Central European countries whence they come. The government's response to the recent refugee crisis has strengthened negative views of Britain. While Germany has said that it expects to take about a million asylum-seekers in 2015, Cameron has said that Britain will take only 20,000 Syrian refugees, over five years (and only those from camps near Syria, rather than refugees already in the EU). He has refused to join the EU scheme for relocating refugees that have arrived in Greece and Italy; an opt-out allows Britain to spurn the scheme, but Ireland and Denmark, which also have an opt-out, are taking part to show solidarity with their partners. Cameron's argument that taking refugees already in the EU would only encourage more to come is, in itself,

rational; but his unwillingness to help EU partners in need has been diplomatically damaging. The Italians feel particularly bruised: they are very keen to work with the British to help them stay in the EU but do not understand why Cameron will give nothing in return.

In September, Foreign Secretary Philip Hammond said that the refugee crisis – and the insistence of some Schengen countries that border controls be reintroduced – would help other member-states to understand Britain's reluctance to accept large numbers of EU migrants. He was wrong and his comment caused offence. Other member-states consider intra-EU migration a very different subject to that of refugees and economic migrants arriving in Europe from outside. The British response to the refugee crisis has reinforced the views of some that Britain is a nasty country. (Not many people outside Britain are aware that it is spending more money on aiding Syrians in camps than any other member-state.)

*“The British response to the refugee crisis has reinforced the views of some that Britain is a nasty country.”*

### **(iv) The other member-states and EU institutions may be less willing to help Cameron than the British imagine.**

Many British observers over-estimate the willingness of EU governments to do 'whatever it takes' to keep the UK in the EU. They note that Angela Merkel is the most influential EU leader and assume that she can fix David Cameron's key demands by browbeating others to follow her lead. Of course, the German chancellor is influential, but she is no dictator and the views of other governments matter hugely. In any case, her hesitant handling of the refugee crisis has dented her popularity in Germany, and also eroded some of her authority within the EU. A weaker Merkel has less political capital to expend on helping the British.

Some EU governments find Britain's uncompromising Atlanticism, deregulatory fervour, antipathy to migration and hostility to institutional integration – plus the fact that it keeps on insisting on special treatment – extremely unpalatable. When the Central European states joined the EU, many of them regarded the UK as a good friend. But over the past decade or so, successive British governments have failed to pay sufficient attention to their needs and concerns – and to those of other smaller member-states, too. In recent months, David Cameron and senior ministers have sought to rectify this problem, with *tours des capitals*, but rather late in the day. Countries such as Austria, Belgium, France and Poland are likely to prove particularly difficult in the renegotiation.

When Cameron won the May general election, many other European leaders expected him to come out fighting on Europe, and to show that he was serious about shifting British public opinion towards remaining in the EU. But he has disappointed them, refusing to praise the EU, on the grounds that if they think he will back membership come what may, other governments will be less likely to accept his demands. But those governments worry that if he waits until he strikes a deal before he states the EU's virtues, it may be too late: by then, anti-EU campaigners will have had the battlefield to themselves and steered public opinion towards withdrawal. This view is shared by some pro-EU ministers within the Conservative government. Britain's EU partners are correct in saying that, since the election, the British debate on the EU has been somewhat one-sided: the eurosceptics have made a lot of noise and not many people have argued back. To some other EU governments, Cameron seems much more interested in keeping his party together than in making the case for the EU. They say that only when he does the latter will they be sure that he is serious about keeping Britain in; and only then will they be willing to make the concessions that Cameron needs. So far he has not done what they want. He presumably thinks that, in the last resort, the other governments will be so appalled at the prospect of Brexit that they will give him what he wants.

Not only governments but also the European Parliament has the potential to create problems for Cameron. On issues such as more rights for national parliaments, less 'social Europe' and cutting red tape, it may well take a fundamentally different viewpoint to that of the British government. It could easily block some of the legislation that stems from Cameron's reform package.

#### **(v) Rows on migration or a deterioration of the refugee crisis would be bad for the EU's image.**

In the referendum campaign, the strongest argument of the quitters will be very simple: if the British people want to be able to control their own borders, they must leave the EU, since membership is incompatible with controlling the numbers coming from other member-states. Unfortunately for the In campaign, very large numbers of Britons think there are too many immigrants, including those from the EU. Such views are not held only among unskilled and unsuccessful working class voters, but also among many mainstream, middle class and educated Britons. So if fresh statistics emerged during the referendum campaign, showing a surge of EU immigration; or if there was a new crisis over refugees entering Britain via the Channel Tunnel (even though that would have nothing to do with EU rules), the result could be a more poisonous debate, re-energised Out-campaigners and pro-EU organisations placed on the defensive.

This autumn, the refugee crisis has been manna from heaven for Out campaigners. It has made the EU look out of control, incompetent, reactive and acrimonious. This is probably the main reason why the opinion polls have shifted towards Brexit in recent months. Few pundits or politicians have bothered to explain that, even if the EU did not exist, there would still be a refugee crisis – but that, without central institutions and mechanisms to facilitate co-operation, it would be even harder to deal with. The same applies to the problem of would-be immigrants congregating at Calais.

*“This autumn, the refugee crisis has made the EU look out of control, incompetent, reactive and acrimonious.”*

#### **(vi) A worsening of the euro crisis would damage the EU's reputation.**

The past six years of the euro crisis have been appalling PR for the EU in Britain. Of course, the eurozone is not the same as the EU. But the British people perceive the two as more or less the same; after all, the same leaders and institutions run both of them. British voters see that the eurozone's problems have been poorly managed and that they have provoked venomous arguments. The high levels of unemployment in some eurozone countries give succour to those in the UK who argue that it should leave the EU to avoid “being shackled to a corpse” (in the words of UKIP MP Douglas Carswell). Every time the euro crisis returns and there is another bad-tempered emergency summit, it damages the EU's cause in Britain.

The renewed problems in Greece, in the summer of 2015, had a particularly negative impact on the way that British leftists view the EU. Wolfgang Schäuble, the German finance minister, succeeded in imposing an especially harsh 'Thatcherite' brand of austerity on Greece, at considerable human cost. His attempt to force Greece out of the euro in July – though unsuccessful – gave the EU and its dominant country a brutal image.

Though Greece won a third bail-out package in August, its travails, and those of the other euro countries, are far from over. It is true that the eurozone has achieved modest growth in 2015. But there are some ill omens: the euro countries are over-dependent on export markets where growth is slowing, their domestic demand remains weak and in some of them debt levels remain dangerously high.<sup>13</sup> Without reforms of eurozone governance there are likely to be more eurozone crises.<sup>14</sup>

13: Simon Tilford, 'Will the eurozone reap what it has sown?' CER bulletin, Issue 103, October/November 2015.

14: Charles Grant, 'Troubled euro needs a softer Germany', Chatham House, *The World Today*, October-November 2015.

**(vii) The strength and resources of the In and Out campaigns are unbalanced.**

At the time of writing the Out groups are more numerous (the biggest two are Vote Leave and leave.eu) and have considerably more money and people than the In organisations. There is a risk that the main In campaign, Britain Stronger in Europe, will be portrayed as top-down and establishment-run (although, as already stated, a minority of establishment figures will support the Out campaigns). If it concentrates on wheeling out industrialists from the Confederation of British Industry, bosses from foreign banks in the City, retired ambassadors and those with an obvious financial interest in membership, such as farmers and academics, it may not win over many hearts and minds. The launch event for Britain Stronger in Europe on October 12<sup>th</sup> suggested that it recognises the danger: although the opening speech was given by a middle-aged man in a grey suit (Lord Rose, the chairman), he was followed by a panel of five people, of whom three were women and four were youngish.

Nevertheless, the Out campaigns will make a point of claiming to represent ‘the little man’ and the common people against the fat cats and the elite; their campaigners will focus on ‘bottom-up’ organisation through pubs, clubs and small businesses. The Out campaigns have many millionaires willing to finance them, while Britain Stronger in Europe has just one. It seems quite likely that the Out groups will have more energy, dynamism and money than the In campaign. A similar difference was evident during the September 2014 Scottish referendum campaign: although those in favour of preserving the union ultimately won, their top-down establishment campaign was less effective than that organised by the nationalists.

**(viii) The Out campaigns have strong arguments that are hard to counter in simple terms.**

Most of the arguments for staying in the EU are complicated, economic, numerical and quite hard to explain – concerning, for example, foreign direct investment, free trade agreements with other parts of the world, the difference between tariffs and non-tariff barriers and the ability to shape the rules of global governance. Many of the arguments for leaving are beguilingly simple: if Britain wants to control its own borders, it has to quit the EU; other countries that are not in the EU are free to trade with it, so a Britain that left the club could easily export to Europe; the £11 billion net annual cost of membership would be better spent on the National Health Service; and if Britain left the EU, so that its legislators and judges were exclusively British, the country would be more democratic. Pro-EU campaigners should be able to rebut all these arguments, but will find it hard to do so in simple and convincing ways.

Pro-EU campaigners believe that they have the facts on their side, and that if only they can – despite hostility

from much of the media – get them across to the British people, they will win. But many experts on polling and elections reckon that in this referendum campaign – as with the recent one in Scotland – the facts will become close to irrelevant; many people will choose to get their information from the social media they follow rather than, say, the BBC, and they will believe what they want to believe.

*“The Out campaigns will make a point of claiming to represent ‘the little man’ and the common people against the fat cats and the elite.”*

**(ix) The Labour Party is in turmoil and the trade unions have become less sympathetic to the EU.**

Since the late 1980s, the Labour Party has been broadly in favour of EU membership, excepting its far-left fringes. It has been the Conservatives who have been riven over Europe. But the unexpected and resounding May 2015 election defeat has had an extraordinary effect on the Labour Party. About 150,000 new members have joined, many of them far to the left of where the party was under Tony Blair, Gordon Brown and Ed Miliband. And some of them are sceptical about the EU – in part, as already mentioned, because of the eurozone’s harsh treatment of Greek Prime Minister Alexis Tsipras and his Syriza government. In September 2015, the members (plus the registered and affiliated supporters) chose Jeremy Corbyn, a man of the hard left, as Labour’s new leader. Corbyn himself is ambiguous on the issue of EU membership, though some of those backing him are unambiguous quitters. Soon after he became leader, moderates in the shadow cabinet forced Corbyn to agree that the Labour Party would support EU membership in the referendum.

But a Corbyn-led Labour party is unlikely to make a significantly positive impact on the referendum campaign. For the next few years, many senior figures in the party will be focused on rifts, splits, plots and potential coups. Labour will be concentrating on itself rather than on the wider world. It may well do a poor job of mobilising centre-left voters to back the EU. And it may turn out to be more divided on the merits of membership than appeared possible at the time of the May general election.

Meanwhile, Britain’s trade unions have become much less pro-EU over the past ten years. In the 1980s, the combination of Jacques Delors at the head of the Commission and Margaret Thatcher in Downing Street convinced the trade unions, like the Labour Party more broadly, that the EU was more good than bad. And trade unionists benefited from specific EU measures, such as

the rules on working time and paid holiday, maternity and paternity leave, rights for agency workers and provisions on information and consultation, as well as treaty articles on non-discrimination.

On taking office Tony Blair and Gordon Brown revoked the opt-out from EU social policy that John Major had secured at Maastricht in 1991. But later on they sought to diminish the EU's role in labour market regulation, which led some British trade unions to question the benefits of membership. And in recent years, as the unions have moved to the left, some of their leaders have started to view the EU mainly as a neo-liberal enterprise. The current position of some key union leaders on membership is ambiguous; and they say that if Cameron 'repatriates' social powers from the EU, they will campaign for withdrawal. In the end, most trade unions will probably be weakly in favour of membership.

#### **(x) Britain's business leaders will give much less vocal support to the EU than they did in 1975.**

The majority of big businesses in Britain favour EU membership. Nevertheless many of them will stay on the sidelines rather than take a public position of support. In July 2015, a poll of the companies represented in the FTSE 350 index found that only 7 per cent would speak out for

an In vote, though two-thirds thought that Brexit would damage their business. This is because chairmen and CEOs worry about the reaction of stakeholders who are opposed to membership – such as suppliers, customers and non-executive directors. There is also a particular fear of being attacked by Out campaigners on social media.

*“Many Tory MPs are genuinely open-minded and will be swayed by whether they think the deal has changed the EU for the better.”*

Those who will speak out include the leading international banks in the City (though it is questionable whether their comments are helpful, given their poor reputation) and foreign car firms that have invested in the UK (though Out campaigners will remind everyone that some of these car firms urged Britain to join the euro). Some prominent names are backing Out campaigns, including those associated with retailers Dixons, Next and Foyles, manufacturers Dyson, JCB and Reebok, and City firms such as Lloyds Bank and Odey Asset Management. Large numbers of smaller businesses – which tend to be the ones most annoyed by EU regulations – have signed up to the various Out campaigns.

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## The role of those outside the UK

The business of fighting and winning a referendum campaign is the responsibility of Britain's pro-Europeans. Nevertheless those outside the UK can help, in certain ways, to influence the result.

Direct appeals to British voters by EU prime ministers, or leaders of EU institutions, might not have much effect. Such interventions could be viewed as self-interested. But there may be exceptions. Angela Merkel has quite a good reputation in Britain and her comments would be listened to. The British tend to look up to, and respect, the Nordic countries and the Dutch, and could be influenced by the words of their leaders. The Irish could be particularly influential, not only because Britain and Ireland are so intimately connected economically, socially and in terms of security, but also because the British do not view the Irish as really foreign.

Some non-EU governments could also make a difference. If Norway's leaders said in public what they say in private – that their situation is uncomfortable, given that they have to swallow most EU rules without having a vote on them – some Britons would listen. They would also pay attention to the words of President Barack Obama, who has already said that he hopes Britain will remain in the EU. The same would apply to the leaders of Canada, Australia and New Zealand (they spoke out in favour

of British membership in 1975 and will probably do so again). Some of the foreign companies that invest in the UK, whether from continental Europe or elsewhere, would be listened to on the question of EU membership.

As far as EU governments are concerned, they can be most helpful by showing flexibility on at least some of Cameron's reform priorities. There is a real danger that the eurosceptics will expose his package of EU reforms as largely insubstantial. One view widely held in Brussels is that the contents of Cameron's deal do not really matter, since nobody will take it very seriously and the referendum will be about In or Out. But in fact the details matter a lot, because of the impact that Cameron's deal will have on the Conservative Party.

As was evident to those who attended the October 2015 Conservative Party conference in Manchester, many Tory MPs have not yet made up their minds on whether to support In or Out. These MPs are genuinely open-minded and will be swayed by the prime minister's arguments and by whether they think the deal has changed the EU for the better (and also, of course, by the prospect of promotion under Cameron and Osborne). The more reforms that Cameron can persuade his partners to sign up to, the easier it will be for him to convince uncertain MPs and party members to back In. And if a large part

of the Conservative Party ends up supporting the prime minister, it will influence the way the media handles and reports on the referendum campaign – and that in turn will affect voters who are themselves uninterested in the details of the deal.

Cameron will need a couple of issues on which he can show that real changes have been made. Given the realities of Britain's political debate, he will need something on the issue of migrants' rights to claim benefits. Clever minds should be able to find ways of crafting reforms that do not threaten the fundamental EU principles of free movement and non-discrimination, but still allow the British government to say that rules on benefits have become fairer.

The other issue where it is important that Cameron gets something – for elite and business opinion, more than for the general public – is safeguards for the single market against the risk of eurozone caucusing. Some Britons genuinely worry that, with the euro now so central to the EU's ambitions, the countries left outside the single currency will become second class. It should be possible to come up with some reforms that protect the position of the UK and other 'outs', without impeding the ability of eurozone countries to integrate further. Indeed, a new institutional framework, distinguishing between euro ins and outs, could help to keep everyone happy.

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