

# BULLETIN

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## Waiting for Brexit

Roderick Parkes

*In 2014, the UK will take two decisions potentially disruptive to the EU: the government will choose whether to withdraw from its European crime and policing commitments, and Scotland will decide whether to negotiate independence from the UK. Madrid, Paris and Berlin already tend towards a punitive stance. Warsaw should, however, bide its time until the UK seeks to renegotiate the terms of its EU membership, when the ball will be in Poland's court.*

In recent visits to European capitals, the British Foreign Secretary and Europe Minister have underlined a message their diplomats have been broadcasting since summer: “the UK is engaged in Europe.” This move to raise-bomb Europe with British ministers is, however, widely deemed to have backfired. It is not just that the message of engagement was undermined by the eurosceptic tone of the Westminster debate about the EU's Multiannual Financial Framework 2014–2020. It was the language used by the ministers to describe the UK's relationship to the EU.

**British Home Affairs Opt-out.** The UK's home affairs opt-out is a case in point. In 2009, the UK secured a future option to withdraw *en bloc* from its criminal law and policing commitments, citing its concern about the expansion of the jurisdiction of the European Court of Justice from 2014. On their recent trips, William Hague and David Lidington annoyed their hosts by expressing a very procedural understanding of this right, presenting it as a mere technicality and one which by no means precluded the UK from later opting back into the policies of its choice.

They thus showed disregard for the disruption that would be caused to other governments. Berlin, for instance, has long used its partnership with London to tip the balance in disputes between its interior and justice ministers. Mainland governments are worried not only about old compromises unravelling but also about contagion to other areas of integration. Criminal-law cooperation was instigated to facilitate the free movement of persons within the EU, and the related area of civil-law cooperation is now becoming key to internal market integration. Governments do not view the opt-out as within the spirit of mature EU relations.

Britain's partners thus perceive relations as something more than strictly contractual, and they have been prepared to enforce this understanding. In the past, they have resisted the UK's pick-and-mix attitude to integration. They rebuffed, for instance, its demands to participate in visas and border cooperation, the Commission ruling that, legally speaking, the UK had forfeited its right to participate in these migration-control measures when it chose to remain outside the Schengen area. In reality, it was doing more than impartially enforcing the rules—it was punishing the UK. It is under pressure to do so again should the UK try to opt back into its choice of crime and policing policies.

**Scottish Independence Referendum.** Coming, as it did, at the same time as the government's statement that its “current thinking” is to withdraw from crime and policing in 2014, the 15<sup>th</sup> October announcement that Scotland will hold a referendum on independence before the end of the same year met with annoyance in other capitals. Whilst EU governments recognise that Scottish independence is an internal matter for the UK, they are again dismayed by the British failure to recognise the impact upon the EU. Member States have no appetite to re-open the treaties on Scotland's voting weight in Parliament and Council or to afford Scotland the same exceptional status enjoyed by the UK. London, however, says it does not need legal advice from Brussels on the matter.

In response, the Commission president has already echoed the punitive line given by Madrid ahead of the 25 November Catalan elections—an independent Scotland, he said, would lose its EU

membership and have to apply to accede again. Although he was obliged to row back this position, behind the scenes there is discussion in major European capitals about just such punitive options. One would see the EU refuse to recognise Scotland as a successor state to the UK, thus removing its membership rights, and then oblige it to negotiate a withdrawal from its residual obligations under the terms of the EU's exit clause, Article 50.

There is also talk about achieving a more fundamental purpose—ridding the EU of the UK altogether. By refusing to recognise either an independent Scotland or the remainder-UK as successor states to the UK, governments speculate that they could end British membership. Alternatively, by refusing to recognise Scotland's membership claims, they would break a taboo, making it difficult for British moderates to paint their own country's exit as extreme. The British premier looks set to announce that he will try to renegotiate the terms of the UK's membership, committing to the principle of giving voters a choice between this new settlement and full withdrawal after the next election in 2015.

**The UK's EU Referendum.** The British foreign office is aware of Britain's poor reputation, and diplomats give a straightforward explanation for the procedural tone: they are simply defusing a tense domestic debate. European integration has emerged as a common thread in otherwise unrelated, but highly divisive, domestic issues such as constitutional, justice and economic reform. In a country accustomed to strong central government, efforts to achieve consensus within a coalition government in London as well as with Edinburgh make it nigh on impossible to subordinate domestic policies to European compromise. The unemotional tone is necessary to maintain some kind of British engagement in Europe.

This is a partial truth. The procedural tone also reflects the fact that much of the British political elite has already mentally exited the bloc and is preparing to take what it can on the way out. For many Conservative and UKIP politicians, such is the UK's importance and its international trading prospects that London will enjoy an unassailable negotiating position towards other EU governments. The punitive noises from other capitals are thus perceived as nothing more than evidence of frustrated powerlessness and the recent statements by Polish Foreign Minister Radosław Sikorski and Angela Merkel on the importance of Britain's EU membership as affirmation of Britain's hold over the EU rather than a coded final warning.

**Recommendations for Poland.** It is true enough that a punitive line would at this stage be an expression of frustration, and nothing more than an effort to frighten the British out of legitimate decisions with negative implications for the EU. If followed through, it would also backfire. In the case of home affairs, for example, any refusal to allow the UK to opt back into its choice of measures would create a Member State relatively lawless in international terms. And in the case of an independent Scotland, a forced withdrawal would be far more disruptive than gaining another Member State by stealth. Moreover, ahead of an EU membership referendum, it would allow London to claim to international partners such as the U.S. that it is being squeezed out of the EU.

It is also true that the various British issues worrying Europe are largely unrelated. The Scottish independence bid, for instance, is not a sign of the isolationism that pertains to home and economic affairs, but a reaction against it. Edinburgh has an ambition to become an active member of the international community, rejecting London's foreign policy. Speculation about Scotland being obliged to leave the EU only dampens this enthusiasm and strengthens euroscepticism in Edinburgh, alienating this oil-rich country. Given the absence of precedent under EU law, the Commission actually enjoys considerable discretion to decide on the status of an independent Scotland, including choosing a model of "internal accession" whereby Edinburgh retains membership but assents over time to give up the special arrangements won by London.

If it wishes to foster British engagement, Poland should thus push the Commission to clarify its position on the issues at hand, preventing other governments from using the ambiguity to vent frustration. But it should also be ready to stand firm when the UK demands a renegotiation of its membership. The days when Warsaw needed London as an active partner in eurozone negotiations, or on internal market and defence issues, are over. Increasingly, London needs Warsaw. With the foreign office and the governing coalition partner Liberal Democrats attached to the EU status quo, London is unable to formulate a vision of its future relationship to the bloc, and is likely to become even more of a lame duck following the announcement of its EU referendum. Warsaw, ready to think strategically about the shape of the Union, will be well placed to define British membership in a way that suits it.