

Will Cameron get what he wants? Anticipating reactions to Britain's EU reform proposals

Steven Blockmans and Stefani Weiss

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After months of speculation about the British Prime Minister's specific demands in terms of the "renegotiation" of the UK's relationship with the EU, and propelled by the launch of the 'in' and 'out' campaigns for the future referendum, David Cameron has bowed to pressure from the heads of state or government of the other EU member states assembled at the European Council of October 15th. He has committed himself to setting out the UK's specific "concerns" in writing by early November.

While we cannot be certain of the contents of David Cameron's missive to the EU, the contours of the UK's demands have become clearer over the past few weeks. In speeches by himself and several of his cabinet members, and with leaks to the media,¹ the Prime Minister has experimented with the attainability of some of his four key demands.

In his oral statement to Parliament on the most recent European Council summit,² Cameron has come back to his original list of "four things" that the UK "need[s] to achieve". It is therefore reasonable to expect his letter to focus on the following:

"First, on sovereignty and subsidiarity, where Britain must not be part of an "ever closer union" and where we want a greater role for national parliaments.

Second, we must ensure the EU adds to our competitiveness rather than detracting from it, by signing new trade deals, cutting regulation and completing the single market. (...)

Third, we need to ensure the EU works for those outside the single currency, protects the integrity of the Single Market and makes sure that we face neither discrimination nor additional costs from the integration of the Eurozone.

Fourth, on social security and free movement and immigration, we need to tackle abuses of the right to free movement and deliver changes that ensure our welfare system isn't an artificial draw for people to come to Britain."

Talks have been taking place in Brussels since July to inform the UK government's analysis of the legal options for reform. Once Cameron submits his EU reform concerns in writing, a

¹ *The Telegraph*, 10 October 2015 (www.telegraph.co.uk/news/politics/david-cameron/11924603/David-Camerons-four-key-demands-to-remain-in-the-EU-revealed.html).

² (<https://www.gov.uk/government/speeches/pm-statement-on-european-council-19-october-2015>).

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process of negotiation with all 28 member states will start in earnest. Cameron's goal is to finalise these negotiations by the European Council of December 2015.

How will the other member states respond to the UK's demands for EU reform, and how far are they willing to accommodate the UK and provide Cameron with the political capital he seeks to lead the 'in' campaign? Which counterclaims might some of them put on the negotiating table? What balance will the 28 find between the seemingly counteracting claims for increased exceptionalism, intergovernmentalism and supranationalism? What will the European Council conclusions on the UK's wish list for EU reform look like, given that any treaty revision before the time set for the British referendum is unattainable?

These are some of the questions we tried to answer in simulated negotiations, which in reality will play out at different levels of the inter-state consultation, from COREPER to the European Council. It goes without saying that our attempt to pre-enact such negotiations was an exercise fraught with difficulty, if only because our fellow think-tankers, from a fair cross-section of member states represented in the European Policy Institutes Network (EPIN) had to 'guesstimate' their country's national positions on four vaguely formulated EU reform demands, and then negotiate without the benefit of time or back-stopping from the capital. Moreover, the two-day simulation exercise was one prepared by a mock European Council Presidential team rather than by a host of diplomatic and technical actors, not least the UK's own 'scouting' team, geared towards weaving an intricate web of consensus.

Taking these caveats into account, we nevertheless think that, with the help of external experts, our approximation effort to draw up mock European Council conclusions offers interesting insights into the balancing act that Cameron has in store for his counterparts. If one thing has become crystal clear from our endeavour, it is the finding that most of them are disinclined to lend a helping hand to a colleague who failed to stand up to his hard-line Tory backbenchers, or to dispel the propaganda spread by the right-wing Murdoch press and the anti-immigrant scaremongering discourse of the UK Independence Party. In effect, by his high-stakes gamble, Cameron is holding the rest of the crisis-ridden EU hostage with the spectre of 'Brexit' at a time when attention and energy should be devoted to numerous other and more pressing issues in order to secure the cohesion of the Union.

Whereas all other member states are of the view that the UK should remain in the EU, one can nevertheless distinguish four different attitudes among EU countries. First, there is a grouping of 'anglophile' member states, especially those that have a lot riding on Britain not leaving the EU, either because they are geographically close to the UK, or because their economies are considerably integrated, and/or because they share a similar outlook on the European integration process. Ireland, Denmark, Sweden and the Netherlands belong to this grouping of 'all-weather friends' of the UK (see M. Leonard, *Britain in EU: Renegotiation Scorecard*, ECFR 2015), even if they differ on issues such as free movement.

Second, there is a group of countries, mainly from Central and Eastern Europe, keen on economic reforms to strengthen the single market and wary that deeper eurozone integration might be to their detriment, but which also care deeply about free movement and welfare benefits and will not budge under British pressure to give in on these issues.

A third grouping consists mainly of southern member states like Italy and Spain, also keen on strengthening the single market and cutting red tape, especially for SMEs, but which are not in favour of reversing the trend of ever closer union. They also care about maintaining the *acquis* on intra-EU migration.

Finally, there are two important swing states: France and Germany, which increasingly see differentiated integration as the only way to forge ahead with like-minded states, for in-

stance on strengthening the architecture of the Economic and Monetary Union, on which they will not give the UK any veto rights.

Our simulation and the mock conclusions presented below (see Appendix) show that there seems to be general support for a more competitive single market, the swift conclusion of FTAs, better regulation and less red tape – all in line with the political guidelines set out by the Commission. As Cameron himself stated before Parliament on 19th October:

“We have already made considerable progress. There’s been an 80% reduction in new legislative proposals under the new European Commission. And we’ve reached important agreements on a Capital Markets Union, on liberalising services and completing the digital single market.”

Furthermore, the Commission published its new global trade strategy on October 14th. This document reflects the agenda that the UK has been championing for years, including trade deals with the US, China and Japan.

Aided by recent Court of Justice case law in the *Dano* and *Alimanovic* judgments that underline that tackling abuse of welfare benefits is a national competence, Cameron will also find other leaders willing to provide him with clear-cut language on intra-EU migration, unless he tries to encroach upon the fundamentals of the free movement of persons. This is a red line for almost all the other member states.

The bad news – not just for Cameron but for the entire Union – is that a lot of work is needed to bridge gaps between positions on other reform proposals. This is especially so with regard to the proverbial opt-out for the UK from the “ever closer union” mentioned in the preamble to the Treaty on European Union; the ‘red card’ for national parliaments that *The Telegraph* reported as one of the UK government’s key demands, along with (the extension of double-majority) voting mechanisms that ought to safeguard the interests of ‘Euro-outs’ like the UK from the economic decision-making by eurozone countries.

Meeting those demands would require treaty change, which is unattainable in the given timeframe. This implies that all that Cameron can hope to achieve here is more declaratory in nature, along the lines sketched out below in our mock Council Conclusions. It is questionable whether the language in our simulated conclusions is strong enough to convince swing voters that the Prime Minister has secured the legal belts and straps he aimed for from his colleagues in the European Council to safeguard the unique position of Britain in the EU.

Introducing alternatives in the European Council conclusions may go some way to accommodating Cameron in his quest to keep the UK in the EU: a better yellow card procedure and a new green card to boost the constructive role of national parliaments in the EU legislative process, and a statement of fact that, in monetary terms, the EU benefits from differentiated integration, which allows countries like the UK to keep the Pound Sterling.

In conclusion, Westminster cannot simply expect to be the sole *demandeur* at the negotiating table. The UK will have to show solidarity with other member states’ desires to shape the European Union. Cameron should be realistic about what is achievable by 2017. It would therefore seem advisable that he refrain from pitching his demands too high – no higher than the level of ambition expressed before Parliament on October 19th. He should also adopt a more constructive approach that sets the scene for a Convention after 2017, opening the treaty for a revision that could accommodate both the British demands for an ‘opt-out’ from ever closer union and giving leeway to those who wish to integrate further. Putting emphasis on strengthening the single market in the more immediate term would allow the Prime Minister to show his home audience that he is a leading reformer and that the EU gives oxygen to the British economy. This is an obvious area where he might be able to seal deals during the UK’s Presidency of the Council of the EU in the second half of 2017.

Appendix: The UK and the EU - A Simulation of the EU Reform Agenda

The European Council President's team:

- Steven Blockmans (CEPS)
- Stefani Weiss (Bertelsmann Stiftung)
- Vilde Renman and Sophia Russack (CEPS)

Heads of State or Government:

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| - Austria: Lola Raich (OIIP) | - Italy: Eleanora Poli (IAI) |
| - Bulgaria: Antoinette Primatorova (CLS) | - Ireland: Andrew Gilmore (IIEA) |
| - Czech Republic: Věra Řiháčková (Eu-
ropeum) | - Netherlands: Adriaan Schout (Clingendael) |
| - Denmark: Jan Høst Schmidt (Think Tank
Europa) | - Poland: Karolina Boronska-Hryniewiecka
(PISM) |
| - France: Vivien Pertusot (Ifri) | - Slovakia: Patrik Kovač (SFPA) |
| - Germany: Nicolai von Ondarza (SWP) | - Spain: Salvador Llaudes (Elcano) |
| - Greece: Filippa Chatzistavrou (ELIAMEP) | - United Kingdom: Agata Gostyńska (CER) |

Advisors, also guaranteeing respect for the positions of the Commission and the Council General Secretariat:

- Wilhelm Schönfelder, former Permanent Representative of Germany to the EU
- Poul Skytte Christoffersen, former Permanent Representative of Denmark to the EU
- Tom de Bruyn, former Permanent Representative of the Netherlands to the EU

CONCLUSIONS OF THE EUROPEAN COUNCIL (from the simulation exercise)

1. The European Union is currently facing several challenges, in both its internal and external spheres. The EU must try and solve acute problems while addressing concerns related to its future development.
2. In this context, the UK has raised several key reform issues. The European Council shares the ambition to seek reform that increases the efficiency, effectiveness and legitimacy of the EU.

Ever closer union

3. With regard to the concerns of the UK on the "ever closer union" concept in the treaty, the European Council recalls the principles laid down in its June 2014 conclusions; namely 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 such as the United Kingdom who do not want to deepen any further.
4. The treaties contain general enabling clauses designed to be applied on a case-by-case basis at the request of member states that are willing to enhance their cooperation in designated policy areas.
5. The treaties also provide forms of flexibility that have been added through protocols in order to accommodate specific political, economic or legal preferences of member states.

Currently, Protocol No. 15, attached to the Treaty of Lisbon gives the United Kingdom a permanent derogation from the rules pertaining to the third stage of economic and

monetary union. Protocol No. 19 acknowledges that the UK does not participate in all the provisions of the Schengen *acquis*. Protocol No. 20 permits the UK to opt out of certain aspects of the free movement of persons and border checks. Protocol No. 21 allows the UK to not participate in a number of policies developed by the EU in the area of freedom, security and justice. Protocol No. 30 clarifies the application of the Charter of Fundamental Rights in relation to the laws and administrative action of the UK and of its justiciability within the UK.

The member states agree to clarify the application of the “ever closer union” concept in the next round of treaty revision. The European Council takes note of the wish of the UK to frame this by way of a Protocol. The amendment of the treaty remains subject to approval through national procedures.

Role of national parliaments in securing respect for subsidiarity and proportionality

6. The treaties confirm that competences not conferred upon the Union shall remain with the member states and that the use of EU competences is governed by the principles of subsidiarity and proportionality. The Union shall therefore act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states. National parliaments play an important role in ensuring respect for the principles enshrined in the treaty.
7. National parliaments may contest the compliance of draft EU legislation under the subsidiarity principle. When a third of the national parliaments do so, then the ‘yellow card’ procedure is the most concrete tool for national parliaments to intervene in the EU legislative process, potentially blocking a Commission proposal. However, the full potential of the procedure has not yet been exploited. The Commission has emphasised that respect for the principles of subsidiarity and proportionality will be at the heart of its work. The European Council encourages the Commission to investigate ways to strengthen the ‘yellow card’ procedure by eliminating unnecessary hurdles to its full efficiency and effectiveness. In this vein, it looks forward to suggestions from the Working Group established in the framework of the parliamentary dimension of the Luxembourg Presidency. The European Council invites the Council and the European Parliament to seriously consider objections by a simple majority of national parliaments in the event of an ‘orange card procedure’.
8. The European Council takes note of detailed proposals on how to further strengthen the role of national parliaments in the EU decision-making process. The European Council welcomes the fact that discussions on these proposals are continuing in the Conference of Parliamentary Committees for Union Affairs (COSAC). It is important that enough tools exist for national parliaments to shape EU legislation in a constructive manner.

One idea concerns the introduction of a ‘green card’: a procedure whereby a group of national parliaments working together would be able to make constructive policy or legislative suggestions to the Commission, including for the review or repeal of existing legislation. Such a ‘green card’ could be introduced within the existing treaty and institutional frameworks.³

³ In June 2015, the House of Lords submitted to the European Commission a green card initiative on food waste. The initiative was co-signed by 15 of the 41 national parliaments and chambers of the other member states. In the meantime, two more national parliaments have joined the initiative. Whereas the European Council welcomes the fact that national parliaments take a more proactive role to sub-

In this regard, the European Council welcomes the Commission's readiness to respond politically in a constructive way if there is widespread support from national parliaments. The European Council encourages the Commission to give serious consideration to such suggestions and either propose appropriate legislative or other acts, or explain why it decided not to take the requested proposals into account.

Competitiveness

9. Building upon the decisions adopted during the Competitiveness Council in June, the delegation of Luxembourg reported on the progress made in the implementation of its EU Presidency work programme on competitiveness. We need to make the EU a source of growth, jobs, innovation, and success. That means the successful conclusion and ratification of TTIP in the interest of our citizens and to exploit the full potential of other agreements. The European Council is strongly in favour of completing the single market, especially in the area of services, capital markets, the digital agenda, and energy.
10. In this respect, the European Council notes the progress made on the implementation of the new digital single market strategy. A case in point is the roaming agreement that could cut the cost of mobile phone bills for businesses and tourists alike. It is equally important to target areas where action is needed for the digital transformation of industry and to encourage the development of digital entrepreneurship, especially for start-ups.
11. The European Council welcomes the ambition of the upcoming trio Presidency to take forward initiatives with European added value and reduce the cost of non-Europe while strengthening EU standards. The European Council supports the approach laid down in the Better Regulation package presented by the Commission in May. One focal point is reducing red tape to improve cross-border business opportunities for small and medium-sized enterprises. We want to create a genuine single market, for businesses and consumers alike, which enables the free flow of goods, services, capital and persons.
12. The European Council takes note of the progress made by EU institutions and the member states in building an Energy Union with a forward-looking climate policy, to be agreed to at the COP 21 conference in Paris. The EU will continue to work on the basis of the Commission's framework strategy, whose five dimensions are closely interrelated and mutually reinforcing (energy security, solidarity and trust; a fully integrated European energy market; energy efficiency contributing to moderation of demand; decarbonising the economy; and (investments in) research, innovation and competitiveness (incl. investments). The European Council will continue to give guidance on these matters.

Economic and monetary integration

13. Eurozone integration is aimed at strengthening the internal market and the cohesion of the Union. It is not aimed at undermining the competences, rights and obligations of those member states not participating in it.
14. In this context, safeguards for non-euro member states already exist by way of a double majority decision-making rule for actions of the European Banking Authority. Decisions by this authority should be supported by a simple majority of both member states participating in the Single Supervisory Mechanism and other non-participating member

mit constructive and non-binding suggestions on policy measures or legislative proposals to the European Commission, the introduction of a green card procedure cannot alter the Commission's exclusive right to initiate legislation without amending the treaties.

states. Concerns relating to the EBA's governance and voting arrangements should be considered carefully and the equal treatment between both groups of member states should be guaranteed.

15. In the case of stated reasons of vital national interest of countries with derogations from eurozone legislation, the Council must delay the voting on economic and monetary issues until the matter has been debated by the European Council.
16. Further reform is needed within the eurozone, while upholding the rights of those EU member states that are outside the euro. The process towards a deeper EMU should be characterised by openness and transparency and be fully compatible with the single market in all aspects.
17. The European Council will remain seized of the matter.

Free movement of labour

18. The European Council reasserts the general principle of non-discrimination on grounds of nationality, and the principle of free movement of labour, which form the bedrock of the single market.
19. The EU and the member states continue to implement measures on social policy guarantees that take account of the diverse forms of national practices. In this regard the European Council takes note of recent case law on the free movement of labour, in which the Court of Justice has clarified the competence of member states to determine rights to permanent residence and social benefits for non-active EU migrants. In the same vein, the European Council invites the Commission to address in its future mobility package, the unintended use by EU migrants of national social security systems, in particular child allowances.
20. The European Council recognises concerns raised by certain member states concerning the existing provisions for deportation, and re-entry restrictions of criminal migrants. The European Council invites the Commission to examine this issue.