

Brexit essentials: UK proposals for EU reform

Prime Minister David Cameron has committed to hold an “in/out” referendum on the UK’s membership of the European Union by 2017. The Prime Minister has promised first to attempt to negotiate a “*new settlement*” for the UK within the EU, “*with the single market at its heart*”.

This is the first in a series of briefings covering the essential aspects of the UK’s referendum on EU membership. This edition discusses the Prime Minister’s proposals for reform, the likelihood of success in renegotiation, and the extent to which renegotiation will impact the referendum.

The Prime Minister’s proposals for reform were published in a letter to European Council president Donald Tusk on 10 November 2015. This has been positioned as a starting point, to serve “*as the basis for a broader, more detailed discussion*”, rather than a final list of British demands. It is expected that detailed discussion on the proposals will take place at an EU summit in December 2015.

The Prime Minister’s proposals cover the following four key areas:

- 1. Economic governance:** ensuring that the interests of non-Eurozone Member States are safeguarded in EU policy;
- 2. Competitiveness:** consolidation of the single market, removing remaining barriers to trade and cutting red tape;
- 3. Sovereignty:** opting-out of the principle of “*ever closer union*”; enhancing the role of national parliaments; and safeguarding the principle of subsidiarity - that the EU will only intervene if it can act more effectively than Member States at the national level; and
- 4. Immigration:** reducing the benefits available to EU migrants to the UK.

Referendum timeline

10 November 2015 - Prime Minister publishes official list of renegotiation demands

August 2016 - December 2016 - Foreign Secretary Philip Hammond wants negotiations completed by August 2016, at the latest by the end of 2016

Autumn 2017 - Latest time referendum could take place to meet 2017 deadline, to avoid winter weather affecting turnout

17-18 December 2015 - EU summit to discuss UK proposals for reform

Late 2016 / early 2017 - Polling day - the most likely time for the referendum to take place

2019 - UK could withdraw from the EU two years after notifying the European Council of its intention to leave

What will be the impact of renegotiation on the EU referendum?

“Prima facie we see a number of elements which appear to be feasible, like finding ways to increase the role of national parliaments; some issues which are difficult, like ever-closer union and relations between the euro ins and outs; and some things which are highly problematic as they touch upon the fundamental freedoms of the internal market. Direct discrimination between EU citizens clearly falls into this last category.”

Margaritis Schinas, European Commission spokesperson, 10 November 2015

For referendum voters interested in financial services seeking stronger non-Eurozone safeguards and wishing to progress the single market, Cameron’s renegotiation is likely to be perceived as a step in the right direction and could be considered a “success”. Voters interested in regaining power from Brussels, allowing the UK to enjoy the economic benefits of the EU but reject integration in other areas, are more likely to be disappointed by the renegotiation outcome. For voters interested in the highly politically charged area of EU migration, it may be difficult for the Prime Minister to portray minor concessions in migration benefit laws as a success.

Whether the renegotiation is successful enough to swing undecided voters to vote to remain in the EU will depend on whether issues that the public care about are satisfactorily addressed, and how this is presented to voters. It is clear that the “undecided” camp will sway the vote; recent polls have suggested that a “successful” renegotiation could be crucial in deciding the referendum’s outcome.

The impact of renegotiation on undecided voters

| | Remain | Leave | Wouldn’t vote | Don’t know |
|---|--------|-------|---------------|------------|
| Pre-renegotiation If there was a referendum on Britain’s membership of the European Union and this was the question, how would you vote: Should the United Kingdom remain a member of the European Union or leave the European Union? | 38% | 40% | 6% | 16% |
| Post-renegotiation Imagine the British government under David Cameron renegotiated our relationship with Europe and said that Britain’s interests were now protected, and David Cameron recommended that Britain remain a member of the European Union on the new terms. How would you then vote in a referendum? | 47% | 29% | 6% | 18% |

Source: YouGov poll, published 28 September 2015

Although the ultimate recommendation by the UK Government will have a strong influence over the outcome of the referendum, there is a risk that even if the majority of the Prime Minister's goals are achieved, he would struggle to excite voters with the resulting reform package.

Populist opinion in the UK is increasingly vocal against immigration, and the EU referendum risks becoming a protest vote on that issue alone. Successes in securing non-Eurozone safeguards, for example, are likely to take a back-seat in changing the minds of voters whose priority is to close UK borders. This risk has been compounded by the recent refugee crisis (with few pro-EU politicians coming forward to explain that intra-EU migration is a different subject to that of refugees and economic migrants from outside of the EU). Indeed, the fact that the Prime Minister, in his speech announcing his demands, spoke for half an hour before setting out the four reform areas, suggests his acknowledgment that for many voters the referendum will not be about the renegotiation alone.

UK proposals for reform

1. Economic governance: non-Eurozone safeguards in respect of EU policy

The UK has a permanent “opt-out” of the Eurozone. Changes to voting rules in November 2014 mean that the 19 Eurozone nations could constitute a “qualified majority”, able to pass legislation without the support of the remaining Member States. Concerns have been raised in the UK that the 19 Eurozone countries could form a caucus, putting the interests of the Eurozone ahead of those of the single market more generally, subjecting the UK to policy decisions that it did not have a hand in making. There is particular concern regarding regulation of financial services in the City of London.

“As the Euro area continues to integrate, it is important that countries outside the Euro area are not at a systematic disadvantage in the EU. So future EU reform and treaty change must [...] guarantee fairness for those EU countries inside the single market but outside the single currency.” **George Osborne, UK Chancellor of the Exchequer, and Wolfgang Schäuble, German Finance Minister, joint Financial Times article of 27 March 2014**

The Prime Minister's letter to Mr Tusk requested legally binding principles recognising, among other things, that *“there should be no discrimination and no disadvantage for any business on the basis of the currency of their country”*; *“any changes the Eurozone decides to make, such as the creation of a banking union, must be voluntary for non-Euro countries, never compulsory”*; and *“taxpayers in non-Euro countries should never be financially liable for operations to support the Eurozone as a currency”*.

The Prime Minister's letter does not set out any concrete proposals as to how these principles should be safeguarded. It is likely that negotiations will explore options such as extending the current double majority requirement (that decisions of the European Banking Authority must be made with a double majority of both Eurozone and non-Eurozone Member States) to other areas, to provide safeguards against the Eurozone caucusing; and introducing an “emergency break” that will postpone a Eurozone decision for a one year review period if a non-Eurozone country believes that it would damage the single market.

“Non-Euro members like Britain which are outside the Eurozone need certain safeguards in order to protect the single market and our ability to decide its rules and to ensure that we face neither discrimination nor additional costs from the integration of the Eurozone [...] any issues that affect all Member States must be discussed and decided by all Member states.”

David Cameron, 10 November 2015

2. Competitiveness: completion of single market and cutting red tape

The Conservative Party manifesto for the 2015 general election promised to *“expand the Single Market, breaking down the remaining barriers to trade and ensuring that new sectors are opened up to British firms”*.

“The United Kingdom would like to see a target to cut the total burden on business [...] we should bring together all the different proposals, promises and agreements on the Single Market, on trade, and on cutting regulation into a clear long-term commitment to boost the competitiveness and productivity of the European Union and to drive growth and jobs for all.” **David Cameron’s letter to Donald Tusk, 10 November 2015**

This is a desire shared by many Member States. The current President of the European Commission, Jean-Claude Juncker, has similar views to the UK on how the EU should be made more competitive, and has already announced plans to cut unnecessary regulation (including withdrawing around 80 draft directives). Many of the reforms that the Prime Minister is seeking are already underway: President Juncker’s Commission aims to extend the single market into the digital economy; create a capital markets union; and negotiate trade agreements with countries such as Japan and the US - the Transatlantic Trade and Investment Partnership with the US (TTIP) is the obvious example of this.

The Prime Minister’s desires to expedite the process are therefore likely to be met with cooperation, although it may be difficult for him to position this as a “win” on his list of demands.

“We share Mr Cameron’s view on the need to increase competitiveness & cut red tape, already in the @JunckerEU programme.” **Manfred Weber, chairman of the European People’s Party group, 10 November 2015**

3. Sovereignty: opt-out of closer union and enhancing the role of national parliaments

There are three limbs to the Prime Minister's proposals in respect of sovereignty: opting-out of the principle of *"ever closer union"*; enhancing the role of national parliaments; and safeguarding the principle of subsidiarity.

Opt-out of "ever closer union"

The preamble to the Treaty on European Union states that the signatory Member States are *"resolved to continue the process of creating an ever closer union among the people of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity"*; similar language appears elsewhere in the treaties. The view of many is that the presence of this wording has had little or no practical effect on EU legislation. However, it has been argued that the European Court of Justice relies on the *"spirit"* of the treaties and uses the overriding objective of an *"ever closer union"* as an incentive to favour EU integration in its decisions.

The Prime Minister has requested that the UK's obligation to work towards an *"ever closer union"* is ended, *"in a formal, legally-binding and irreversible way"*. As the phrase does not attach to any particular EU legal competency, there would be no tangible or direct legal impact resulting from the ending of this commitment. It is unlikely that other Member States would agree to amend the wording in the treaties on a purely symbolic basis; but it is likely that a compromise position will be reached. In 2014 the European Council formally stated 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"*.

Enhancing the role of national parliaments

The current *"yellow card"* system allows national parliaments to club together to ask the European Commission to reconsider proposals if they think that they breach the principle of subsidiarity.

The Prime Minister wants to see a new arrangement *"where groups of national parliaments can come together and reject European laws which are not in their national interest"*. He has not gone so far as to suggest a veto for every Member State, which, in the EU of 28, *"would mean gridlock"*. Strengthening the existing *"yellow card"* system is likely to receive a degree of support from other Member States.

Earlier this year the UK House of Lords proposed a complementary *"green card"* system, whereby national parliaments could increase their influence on the development of EU policies by calling for new legislative action, or the review, amendment or repeal of existing legislation¹. It may be that this option is also explored alongside a strengthened *"yellow card"* system.

Implementing subsidiarity

The Prime Minister has also requested that the EU's commitment to subsidiarity is fully implemented. Ensuring an effective balance of powers between national parliaments and the EU is likely to receive broad support from other Member States.

¹ Letter from Lord Boswell of Aynho, House of Lords European Union Committee, 28 January 2015.

“As the Dutch have said, the ambition should be “Europe where necessary, national where possible.” David Cameron’s letter to Donald Tusk, 10 November 2015

4. Immigration: reducing the benefits available to EU migrants

The Prime Minister has set out two key proposals for reform: (i) that EU migrants to the UK must live and contribute for four years before qualifying for in-work benefits or social housing; and (ii) stopping child payments to migrants’ children who live elsewhere in the EU.

Some Northern Member State governments are sympathetic to change to migration laws, but they are likely to be opposed by a number of Central and Eastern European Member States, many of whose citizens are migrant workers in the UK. But if the proposed changes go so far as to be perceived as an affront on one of the central tenets of the EU - free movement of persons - they are likely to be met by strong opposition from other Member States. The EU treaties are currently clear that governments cannot discriminate against EU workers because of their nationality.

“The principle of the free movement of labour is a basic treaty right and it is a key part of the single market. Over a million Brits benefit from their right to live and work anywhere in the EU. We do not want to destroy that principle, which indeed many Brits take for granted. But freedom of movement has never been an unqualified right, and we now need to allow it to operate on a more sustainable basis in the light of the experience of recent years.”

David Cameron, 10 November 2015

The Four Freedoms

The single market is based on four freedoms - the free movement of goods, services, persons and capital.

The four freedoms

| Goods | Persons | Services | Capital |
|--------------------------|---------------------------|---|---------------------------|
| Internal taxation | Free movement of citizens | Freedom to provide and receive services | Free movement of capital |
| Free movement of imports | Free movement of workers | | Free movement of payments |
| Free movement of exports | Freedom of establishment | | |

An imminent European Court of Justice ruling may make it easier for national governments to restrict social benefits for EU migrants: the Advocate General has agreed that the UK should be able to apply a residency test to EU citizens claiming certain social benefits, as even though this amounts to unequal treatment and may be considered to be indirect discrimination, “*it is justified by the necessity of protecting the host Member State’s public finances*”². However, in order to escape infringement of EU laws, any residency requirement will have to apply equally to UK as well as EU citizens - which may not be palatable to the UK government.

“It goes without saying that we will work constructively with the British government. But it also goes without saying that [...] there are achievements of European integration that cannot be haggled over, for example the principle of free movement and the principle of non-discrimination.” **Angela Merkel, German Chancellor, 15 October 2015**

“For the Czech Republic [...] any intrusion into the free movement principle is a very serious problem. The right to live and work anywhere in the EU is of fundamental nature for us in view of our historical experience [...] it is unimaginable that we would relinquish the advantages this freedom represents.” **Bohuslav Sobotka, Czech Prime Minister, 10 November 2015**

In any event, it may be difficult for the Prime Minister to argue that reforms to EU migration laws will significantly curb the number of EU migrants to the UK, although they may succeed in lightening the burden on the public purse. EU migrants are in fact net contributors to the British economy: between 2001 and 2011, they contributed 34% more in taxes than they received in benefits and services³. It is therefore not clear that social benefits are a key push factor in bringing EU migrants to the UK, and less clear that imposing restrictions on such benefits would have any impact on the number of EU migrants in the UK.

2 Opinion of Advocate General Villalón in Case C-308/14, *Commission v United Kingdom*, 6 October 2015. The Advocate General assists the judges of the European Court of Justice by presenting an independent opinion on points of law. The opinion of the Advocate General is advisory and does not bind the Court, but it is nonetheless followed in the majority of cases.

3 Christian Dustmann and Tommaso Frattini, *The fiscal effects of immigration to the UK*, UCL Centre for Research and Analysis of Migration, November 2013.