



# Britain and Europe: opt-outs, U-Turns and exit scenarios

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## Policy Recommendations

1. The pro-European camp in the UK exists and needs support from like-minded individuals and groups across the EU. The use of uncompromising language such as “stay in or get out” only serves to strengthen the Eurosceptics.
2. Complex notions of subsidiarity and proportionality need clarity and effective application to engage citizens in Member States.
3. Enhanced transparency in appointment for top jobs and more open governance could increase a wider feeling of “ownership” of the EU project.

## Abstract

Britain stands at the crossroads. In September a referendum on Scottish independence takes place in which the gap is narrowing between the two sides, something unimaginable just a year ago. Partly responsible for the swing to the independence camp has been the negative campaigning coming out of London with prophecies of doomsday should the vote favour leaving the UK. The EU could take note of this in its handling of the mood in Britain in advance of any exit referendum. Contrary to popular impression, there is a strong if quiet pro-European camp in the UK desperately hoping for a positive outcome but comments outside the country deprecating the British serve only

to give more ammunition for groups wanting out. Whilst subsidiarity is often sold as an instrument to bring the EU closer to the people, it has until now failed to inspire or provide a vision for the future, something which the UK government is hoping to achieve through a special review.

The de facto decision-making centre of the EU as portrayed especially in the media is tilted to Berlin. Many are hard put to name the six month rotating presidency, understandably so when all eyes are on the German Chancellor for big decisions. A transparency deficit raises suspicions of sordid back-room deals and fuels the arguments of Eurosceptics.



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### Parliamentary Process for the Referendum

“You turn if you like” said Mrs Thatcher once, “but the lady’s not for turning”<sup>1</sup> referring to suggestions of a U-Turn on her stringent economic policies. Her successor Cameron has a wistful goal to be another “iron” prime minister promising a referendum on EU membership, should he head a government after next year’s election.

A bill to introduce a referendum has already been put to parliament but was kicked out by the House of Lords. This was a private member’s bill not put forward by the coalition government which is split on the question.

The Queen’s speech opening a new session of parliament in May made no reference to a referendum bill. Another attempt to get a bill through in defiance of the Lords would require invoking the Parliament Act<sup>2</sup>. Even if a bill passes parliament before the next election in May 2015 it is up to the government to determine the timing of any referendum and the modalities would again need the agreement of both houses of parliament. The electoral commission has already tested a possible question and suggested “should the UK remain a member of the EU” to which a simple Yes/No can be given.

It would be a gamble for a government to fix a definite date unless it was sure to win such a referendum but for this it would have to gain substantial concessions from Brussels. Such a package deal seems at this stage unlikely considering the fragile support for the UK’s position. No referen-

dum is binding in the UK but it is expected the government of the day would respect the result. A specific date though, by which negotiations would have to begin after any “no” vote is not envisaged leaving a government some scope.

Nevertheless a campaign has already begun with the issue hotly debated in both the UK and by its partners. Negative campaigning describing the alleged lack of viability of the UK outside the EU misses the target. Too often announcements of the end of the world proved to be simple scaremongering. Economic analysis which depicts losses for the City and bankers in the event of an exit will not win sympathy from voters already irritated with this elite. Nor is an insistence that the EU can manage without the UK a persuasive case for Britons to stay.

Often Britain is portrayed as the “US poodle” and thus an EU misfit but Washington has warned against exit<sup>3</sup> and the so-called special relationship with the US has waned. Last year Cameron lost a vote in the House of Commons for military action on Syria<sup>4</sup>. It was a sign of serious reservations on repeating the mistakes of the war in Iraq and following the United States.

Whilst Cameron’s cabinet reshuffle of July was largely seen as a shift to the Eurosceptics, there were also subtle signs that the priority is to reverse his declining popularity. William Hague lost the foreign ministry but is free to campaign outside of London in districts antagonistic to the “elite schoolboys” associated with the prime minister. Further Cameron appointed a heavyweight to the post of chief whip

1) Speech to Conservative Party Conference 1980.

2) The Parliament Acts provide for some bills rejected by the Upper Chamber in one session to become acts in the following session even without the House of Lords agreeing.

3) “Obama warns UK against leaving the EU”, European Voice, 5.6. 2014.

4) “Cameron loses Commons vote on Syria action”, BBC News, 30.8. 2013.



conscious of the need to secure support in his own parliamentary group for his European policy.<sup>5</sup>

## Steps to Brexit

Just three years ago a little noticed publication was produced by the UK parliament entitled "Leaving the European Union"<sup>6</sup>. It mentioned the options under Article 50 of the Treaty on the European Union as amended by the Lisbon Treaty, allowing for a voluntary withdrawal according to a States "own constitutional requirements". Accordingly the UK would notify the European Council, and the Council of Ministers after securing the agreement of the European Parliament would conclude a negotiated agreement passed with a qualified majority. The state withdraws or can have up to two years after notification which could be extended. Ratification by the other Member States is considered likely since withdrawal would have repercussions for all concerned. An orderly settlement would be sought but withdrawal could come about without an agreement.

The paper continued however to warn that there would be no going back to the status quo before membership around 40 years ago and the process of withdrawal could be long and complicated. Many laws would not obviously be clear-cut as to whether they were stemming from EU or domestic legislation or a mix. Article 8 allows a "neighbouring country" to develop a "special relationship" with the Union. An exit does not preclude according to Articles 49 and 50 a country from re-joining but in this case it would be treated as a new applicant.

Since this paper was written in 2011 the British exit scenario has become more than idle speculation. Understandably patience with the British position in the EU is running out with their opt-ins and

outs and privileged bargains. Many feel it is about time Britain chooses and hint an exit would be no big loss. "Put up or shut up" was once the message of former Prime Minister John Major to his party but such rhetoric cuts little ice today with those disaffected or undecided for whatever reason with the EU. The measure of support for the UK Independence Party (UKIP) in the European Parliament elections was hardly a surprise. UKIP polled 27.5% overall and the party can inflict damage not just on the Conservatives but Labour and the ailing Liberal Democrats.

## Subsidiarity for Decentralisation of Power

The red tape, the meddling, the bureaucracy – all have featured in the grand European debate. A review of the balance of competencies was launched by the foreign office to ascertain what stakeholders, individuals, experts and civil society think of the relationship with Europe on a whole range of topics. It was to "deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges"<sup>7</sup>. At the beginning many suspected the review was to make the case for an exit but so far it has thrown up little which could indicate that the UK would benefit from withdrawal. The first part of the review came out in favour of maintaining national control over direct taxation but cooperation with the EU, for example, on consumer rights was supported. The data collected so far shows the importance of the single market for jobs and growth and points to the advantages of working together on, for example, international aid with a proviso that efficiency and coordination is wanting<sup>8</sup>.

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7) The final results of the review of competences will be published later in 2014 and accessible on [www.gov.uk/review-of-the-balance-of-competences](http://www.gov.uk/review-of-the-balance-of-competences).

8) See also, Melanie Sully, "The United Kingdom and Europe: splendid scepticism", in J. Pichler/A. Balthasar (eds), Report on the Future of Europe – striking the balance between "unity" and "diversity"?, NWV, vol 36, Vienna, 2014.

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5) Analysis on reshuffle by Norman Smith chief political correspondent, special news, BBC, 15.7. 2014.

6) V. Miller, „Leaving the European Union“, international affairs and defence, HoC, London, 29.10. 2011.



Subsidiarity<sup>9</sup> seeks to limit the EU to cases where necessary and to ensure that the appropriate actor is involved close to citizens. “European where necessary, national where possible” was echoed in a similar review by the Government in the Netherlands<sup>10</sup>. Subsidiarity is also important for countries like Austria when it comes to protecting social standards, water and transport. Other organisations like the Assembly for European Regions also stress the value of subsidiarity in the decision-making process with regional expertise.<sup>11</sup>

For the UK government the twin principles of subsidiarity and proportionality as laid down in the treaty of the EU are in need of reform. Think tanks too like The Centre for European Policy Studies have considered ideas for deepening the practical applicability of subsidiarity by, for example, national parliaments holding regular subsidiarity debates and at European level with a Commissioner for subsidiarity.<sup>12</sup>

Whereas there are specific procedures for lodging a subsidiarity concern, proportionality is lacking such a profile. According to Article 5 of the TEU “under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”. Proportionality concerns are often neglected in the focus on subsidiarity<sup>13</sup>.

Proportionality has featured in the UK government’s position in opting out en bloc of

around 130 EU police and criminal measures. But this was criticised by the House of Lords after taking evidence from legal experts and the police, and also by the European Committee in the House of Commons. The Lords considered time and money could be wasted by bilateral agreements and opting back in to around 30 measures on an ad hoc basis. The Committee was annoyed with the lack of information coming to parliament from the Ministry<sup>14</sup>. Eurosceptics and UKIP consider the opt-out and opt back in policy of the government as a sham which could lead to a net flow of power to Brussels, the opposite of what the government is claiming.

### Enhanced Transparency for Better Governance

One of the spectacular flops of Cameron occurred with his opposition to Jean-Claude Juncker as Commission president. Yet Cameron’s opposition exposed the less than transparent procedures behind top appointments in EU institutions including the Commissioners. Greater transparency in the allocation of key posts with clear criteria to ensure gender fairness and a greater input from the newer Member States would help to defuse charges of a persistent democratic deficit<sup>15</sup>. The treatment of Juncker by the British press was hardly laudable, but on occasions he brushed off British journalists with what looked like contempt.<sup>16</sup> Better relations with the press by all concerned, could help communicate a more sympathetic image to British voters.

In addition the EU needs to tackle an integrity deficit. The first EU integrity report by Transparen-

9) For definitions see [http://europa.eu/legislation\\_summaries/glossary/subsidiarity\\_en.htm](http://europa.eu/legislation_summaries/glossary/subsidiarity_en.htm)

10) Netherlands Subsidiarity Review, MFA, June 2013.

11) See [www.aer.eu](http://www.aer.eu)

12) S. Blockmans, J. Hoevenaars, A. Schout, J. Wiersma, “From Subsidiarity to Better EU Governance”, CEPS, Brussels, 2014.

13) See IV-63: Beilagen zu den StenProt des Bundesrates, 4.4. 2013 „Schennach hob ferner die Bedeutung der Prüfung der Verhältnismäßigkeit hervor. Vielfach werde diese Grenze überschritten, ohne dass das Subsidiaritätsprinzip verletzt wird, erklärte er“.

14) ESC HoC, 798 March 2013, London

15) See also S. Giegold/S. Goulard/S. Int’Veld/O. Karas/A. Mosca, Der Standard, „Mehr Frauen für das ‚Team Europa‘“. 25.6. 2014.

16) BBC News Juncker Fends off Presidency Questions, 6.6. 2014 <http://www.bbc.com/news/world-europe-27711216> ; See also: <http://www.youtube.com/watch?v=qZA-Zj6ePYU>



cy International (TI) pointed to the vulnerability of EU institutions to corruption “due to loopholes and poor enforcement of rules on ethics, transparency and financial control”<sup>17</sup>. In this connection it quoted a survey showing that 70% believe corruption is present in EU institutions. Although the report mentioned a number of practices supporting high standards of public service, it pointed to weaknesses such as “the growing trend of EU institutions to negotiate laws behind closed doors” and claimed that “critical parts of the legislative process do not receive proper scrutiny and are shrouded in secrecy”. Progress made in recent years, according to the report, was being undermined by complex rules and inadequate checks.

## Conclusion

It is likely the referendum debate will continue in the UK having gained a momentum of its own. A “No” to Europe would inaugurate a lengthy process of disentanglement from the EU legal system with accompanying transition agreements. Such a scenario could inspire Eurosceptics in other countries to intensify their campaigns leading to a multitude of referenda debates across the Union in key countries.

A solid approach to Britain and Europe on the brink of a referendum could aim at:

- positive campaigning with a focus on winning the undecided.
- building bridges with pro-European forces on both sides of the Channel to understand common ground and how to further mutual interests.
- clearer formulation of where the EU sees itself going in the next five years or so.
- explanation of what subsidiarity means in practice and clear procedures for proportionality with more teeth for European institutions involved.
- effective multi-level governance allowing regions and cities to communicate with a bigger voice with citizens<sup>18</sup>.
- greater transparency in decision-making and ethical governance

Europe is an issue for voters in the UK but in opinion polls it is ranked in importance after the economy and immigration although arguably these could all be connected. In the past national referenda have tended to endorse the status quo but this is not enough to rely on for future popular votes deciding the fate not only of the UK but also many other European countries.

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17) TI, 24.4. 2014 <http://www.transparencyinternational.eu/european-union-integrity-system-study/the-euis-report-latest-news/>

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18) See the Assembly of European Regions [www.aer.eu](http://www.aer.eu).



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