

THE RT HON LORD OWEN SPEAKING AT A MEETING OF THE UK-EU
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EUROPE RESTRUCTURED
NEGOTIATE WITH THE EU SOON IN 2013, THEN LEGISLATE FOR A
REFERENDUM AFTERWARDS IN 2014

No British Prime Minister can abdicate from the continuous negotiating process that is the reality of EU membership. After the German elections in September, any German Chancellor will find it essential to start negotiating with David Cameron and not be willing to wait on negotiations until 2017. The EU, the second largest trading bloc in the world after the US, will not reverse its depressed economic state, with the UK uncertain for four years as to whether it will remain in the EU. Commercial, business and financial interests dictate that negotiations are brought forward. The Eurozone crisis still hovers in the background. The British economy is still very weak though hopefully starting to grow.

It is time the present political leaders in Britain recognised that on this issue past leaders have often acted, since 1962, across party dividing lines. This is because all parties are split on many of these questions. In truth, British interests in Brussels are best maintained by party leaders speaking, where possible, with one voice and maintaining broad unity of purpose across governments of different parties. It is good, for example, that now all parties accept the 2011 EU referendum legislation, a consensus that was not present when the legislation was first brought forward. Since 1990 the Conservatives have been the most divided party on Europe. In the previous decade it was Labour who were most divided.

Yet, as the opinion polls and the rise of UKIP have shown, it is hard to deny that there is now a settled will amongst the British people to decide themselves on our future relationship with Europe. They do not want Europe to be decided through a General Election that leaves it solely to the politicians. It would be best to coincide an EU referendum with the June 2014 European Parliamentary elections. If the negotiations are not completed by then, the next window of opportunity would be after the September Scottish independence referendum to December 2014 and a referendum before the end of February 2015 before the General Election.

By October David Cameron must have hammered out a negotiating position within the coalition or the coalition should cease to exist. The minority coalition partner is not entitled to stop the UK negotiating in the EU. The Prime Minister, Foreign Secretary and Chancellor of the Exchequer must start now to negotiate within the EU and put the result fairly to the British people through a referendum. The Liberal Democrats will still be free to recommend a 'yes' or 'no' vote in the referendum that must follow.

The good news for an October 2013-April 2014 negotiation for all the EU Member States is that there is now for the first time a procedure available for making quick Treaty changes provided there is unanimity in the European Council. One set of Treaty amendments should, since Germany insists they are necessary, involve the Eurozone. Such changes would not involve a significant transfer of sovereignty from the UK and therefore will not need a referendum under the 2011 Referendum legislation. The second set of Treaty amendments is where the UK would ask, as a *quid pro quo* for acquiescing in Eurozone treaty amendments, for a restructuring of the EU Single Market. It is simply unacceptable for the UK to facilitate a more integrated Eurozone with, in effect, a block vote controlling all Single Market legislation. Both sets of Treaty amendments would be ready to be put in place depending on the outcome of a UK referendum.

Those Parliamentarians in every party who genuinely believe that there is no negotiation to be had within the EU will see their views tested. But that issue must be tested and Britain must genuinely be seen to try. If it fails, then regrettably a simple 'In'/'Out' referendum must be held. I find it hard to conceive that many Liberal Democrats or Labour MPs would vote against the necessary legislation for a referendum once any such negotiations have been completed. The anger of the British people would be so strong that few MPs at that stage would risk such a voters' rebuff in the 2015 General Election.

The present differences between the parties over a referendum is that Cameron has put, for political reasons relating to UKIP, the cart before the horse, the referendum before the negotiations but it has not helped him

with UKIP. Labour and Liberal Democrats might find it easier to agree if Cameron first started to negotiate and then legislated for the inevitable referendum. Yet David Cameron, in his speech earlier this year, envisaged doing little, if any, negotiating for two and a half years promising a referendum on the EU in 2017 if the Conservatives won the 2015 Election. It is not a precedent to quote Harold Wilson. He was leader of the Opposition, not Prime Minister, when in 1972 he advocated renegotiation of the terms followed by a referendum after the next General Election. In the event Wilson won the Election and was in a position to hold a negotiation from 1974-75 and win a referendum.

I understand why, as Leader of the Opposition, Ed Miliband did not want to follow David Cameron in closing his options and commit to a referendum in the absence of a negotiation over two years prior to writing Labour's manifesto. But this is starting to look as if Labour is against any referenda on Europe. Labour was in government for the first nationwide referendum in 1975 and gave referenda to Scotland, Wales and Northern Ireland on what were for them national constitutional questions. Labour needs to remember that just prior to the 1997 election, which they won handsomely, Tony Blair committed a Labour government to a referendum prior to joining the euro, as did Paddy Ashdown for the Liberal Democrats. This was despite both wanting to join the euro. Blair sensed that with the Conservative government committed to a referendum on the euro, Labour stood to lose too many votes to risk holding out against. That is far more likely to be the case in 2015 than in 1997. For many of the same reasons, therefore, Ed Miliband and the Shadow Cabinet, in my judgement, will have to concede a commitment to a referendum if it has not already taken place before the May 2015 General Election. The best way for Labour now is to say if there is a negotiation in 2013 and 2014 they will agree to legislate for a referendum. Meanwhile during any negotiation they will seek to persuade their fellow social democratic parties to accept changes to the Treaties on both Eurozone reform and the restructuring of the Single Market. Negotiations that start in October 2013 will come before the manifesto of the social democratic grouping is finalized for the June 2014 European Elections. This manifesto could have important electoral implications for the Labour Party giving them the chance to show that in contrast to David Cameron, who left the Conservative Christian Democrat

grouping, a future Labour government would have more negotiating clout inside the EU, which they wish to stay within, and could deliver better outcomes for the British people than the Conservatives. This will go some way to counter a Conservative claim that they had actually carried out a successful negotiation before the General Election. As for the Liberal Democrats they need to be reminded that they said in their 2010 General Election manifesto, “The European Union has evolved significantly since the last public vote on membership over thirty years ago. [We] therefore remain committed to an in/out referendum the next time a British government signs up for a fundamental change in the relationship between the UK and the EU.”

The UK negotiating position should be, first and foremost, for a Single Market that is designed for the whole of Europe. It would follow the existing Economic Area Agreement (EEA) to which all EU countries are signatories. The EEA already separates out Single Market policies from all the complex EU Treaties. Signatory countries outside the EU, like Norway and Iceland, would immediately become full voting members. All European non-EU countries would be eligible to apply to join. A country like Turkey, already in a customs union with the EU, should be welcomed into the EEA. There would be no commitment to free movement of labour for new members of the EEA. Free movement of labour is not essential to a Single Market. Free movement of labour would stay, however, for those EU members who are already or who wish to aspire to be in the Eurozone. The EU has hitherto not treated Turkey well and it is not in our long terms interests to turn Turkey away from Europe. A restructured EEA would also provide a useful stepping-stone to full EU membership for countries in the Balkans who are many years away from joining, let alone Moldavia and the Ukraine.

The rest of the EU may well be persuaded to make other sensible changes like dropping or radically changing the Working Time Directives, helping to satisfy some EU critics in not just the UK but elsewhere in Europe. There will not be a readiness to offer repatriation of powers to only the UK.

No negotiation works unless both sides in a negotiated settlement gain something. What would the EU get out of all this? First and foremost,

continuing Eurozone reform without UK obstruction or holding back. Eurozone members would be heading for a more integrated Europe at a pace that they would set by the end of June 2014. The UK would get clarity over its relationship with the EU with a period of stability following as in 1975.

It might be necessary in fairness to the different views in the UK to offer three choices in a UK referendum if the negotiation was successful. The fact that some people want to retain an option to join the Eurozone makes it hard to avoid putting it in question (a). Similarly people want a straight option to leave the EU in its entirety.

- (a) to stay in the EU and modified EEA retaining the option of entering the Eurozone at some future stage; “Yes” or “No”.
- (b) to stay in the EU and modified EEA but opt out of aspects of the existing EU that are identified in the negotiations as not being essential for countries that do not wish to ever join the Eurozone; for example the Common Fisheries Policy. “Yes” or “No”.
- (c) to withdraw completely from the EU within two years using Article 50. “Yes” or “No”.

No-one can be sure but I believe option (b) would be chosen but a lot would depend on what was negotiated for the various opt outs. The Common Fisheries Policy is perhaps the easiest to justify. There is a case for the options in any settlement being open to all Member States and it might be sufficient to allow the Norwegians to vote “Yes” in a referendum on EU membership, having hitherto voted no, predominantly because of their fishing industry. In Iceland too, the ability to opt out on fisheries policy would help. Another possible opt out would be the Common Agricultural Policy, but here there may be arguments that it is a core EU policy, present from the outset, and central to the European Economic Community. Whether we like it or not the UK has grown used to the CAP and it might be an issue on which we had to stay within in order to opt out in other areas of more importance to us.

Whether to opt out of a Banking Union for countries that have no intention of joining the Eurozone is a difficult issue. After the double voting

arrangement of a majority among Eurozone countries and non Eurozone countries a deal might be possible and the UK would opt to stay in for reasons of self interest and keeping London as the largest banking centre in Europe. Another opt out which will be sensitive relates to law and order questions, and again is a reason for resolving the issue rather than working to David Cameron's timescale of 2017. Most British people do not want to be totally embraced by EU legislation in this area.

The explanation for why the Eurozone crisis has such an effect on the UK is that financial services are a vital interest for the UK, just as the CAP is seen by France as a vital interest for them. The UK was put on the spot politically over legislation on bonuses that should not be a Single Market responsibility. Wisely we absorbed, in effect, a Commission coup but there is a clear and present danger in allowing a block Eurozone voting pattern to emerge in the Single Market in its present form. If there is another time where the UK finds itself, before the negotiations are complete, in a minority under qualified majority voting (QMV) on an important issue involving financial services, then any British Prime Minister must invoke the Luxembourg Compromise. If they do they should be supported in any Parliamentary vote by whoever is the Official Opposition until there are in place Single Market legislative changes that protect our vital interests. The justification for invoking the Luxembourg Compromise was eloquently reaffirmed by French Socialists in their Assembly debate in the spring of 1992. There is no need for the UK to adopt de Gaulle's conduct of the empty chair; we should participate at all times and in all forums as we have the right under the Treaties to do. What needs to be established in the mind-set of other EU countries is that the UK is not negotiating selfishly. An opinion poll in France in May 2013 shows that more French people are against the EU than in the UK. That may be an exceptional finding but as these negotiations open up there will be more support in other countries for what, at present, are seen as purely UK positions.

The full extent of political integration that Eurozone countries will accept will emerge after the German elections. There is even growing talk of a referendum in Germany after changing the no bail out provision in the Maastricht Treaty. Hitherto Germany feared referendums as a mechanism used by Hitler to subvert their democracy. Whatever the shape of the new

German government it will see Eurozone integration as the price for accepting a bail out provision for other Eurozone members. It would be folly for the UK to assume, however, that Germany, under the CDU or the SPD, will give up on both Eurozone financial and economic integration and greater EU political integration. They want the one to follow the other and it will follow, if for no other reason that it remains unlikely that Germany will ever compensate the other weaker economies, through some form of mutualisation of Eurozone debts or agree a substantial Eurozone budget, unless there is a more structured and disciplined Eurozone.

It is also indicative of a very important mood change in Germany in recent months in which not only has a new political party been created against German participation in the present Eurozone, though not against a Northern Eurozone, but that it is no longer a *sine qua non* that France has to be part of such a Northern Eurozone. That party has qualified to take part in the German election and will therefore impact on the result of the election even if it fails to obtain the 5% threshold for MPs in the Bundestag, which is far harder to achieve.

No German government, having given up the Deutschmark, will abandon a Eurozone which they did so much to create. But if there is no agreement over greater integration they will, I believe, create a Northern Eurozone rather than risk a collapse of the present structure. Maybe the Eurozone will just muddle through for the next few years but no-one should count on this. In Italy there is a growing body of opinion against austerity and a belief that they would be better to return to periodic devaluations and restore the lira. Also another crisis looms in a small country, Slovenia. Perhaps in Spain or Italy treaty amendments could become urgent to be put in place in weeks, not months. All of this points to negotiations being needed to start sooner rather than later.

The UK cannot dictate the pace of Eurozone reform but we must be seen as ready to facilitate what they want and no longer be the obstacle. To that extent our partners will see that sensible opt outs hold the key to sensible Eurozone reforms. Much will depend on what and how soon all the Eurozone countries can agree over integration. France is very fearful of a new grand Treaty with the almost obligatory referendum as their economy

worsens and the authority of President Hollande is questioned. On 16 May 2013 President Hollande spelt out his wish for an "economic government" for the Eurozone to be led "by a real president appointed for a long period that would meet monthly to fix economic tax and social policy with the Eurozone having its own budget and the right to borrow". He went on to say that "I understand that there are countries that don't want to join the euro, but they cannot stop the consolidation of the Eurozone." Under a sensible UK negotiating position, he would face no opposition to these changes as the UK would consider this a matter for Eurozone members to decide and not an issue for Member States not in the euro. Instead the UK would assist such a change in the European Council by voting for such a change as part of a unanimous decision. There should be no division between France and the UK on these and many other matters relating to Eurozone reform provided they accept the UK, with no intention of joining, need a restructuring of the EU to adjust to this reality.

The reason why British public opinion wants the negotiations to deal with a range of possible opt outs, to build on the Danish and British opt outs of the euro, negotiated in the Maastricht Treaty, is that the EU is not for many people primarily about the Single Market and economic, financial and trade issues. Their concerns are about much else. In fishing ports and its surrounding areas, the Common Fisheries Policy still arouses great anguish. For people concerned about Third World issues and global poverty, the Common Agricultural Policy, with no sign of reform continues to represent an outrageous distortion of world markets. A new Banking Union reminds people of the refusal of the Eurozone negotiators to accept the democratic choice of the then Prime Minister for a referendum in Greece. Then in Cyprus there was very open bullying and the initial harsh proposals for depositors. To those who rightly still regard NATO as very important for our defence, the endless pressure from the European Commission, Parliament and many Member States for more QMV particularly on Foreign Policy and Defence is seen as a clear and blatant attempt to bypass NATO. It is also a reminder of deep divisions in the EU over the handling of Libya and Syria.

Foreign and defence policy goes to the core of nationhood. Pretension is no substitute for action. Should the UK ask to opt out here as well? This is

perhaps the core issue on which the UK's negotiations could succeed or fail. The rest of the EU knows that if the UK opts out they will lose something of real and continuing value. Can the UK continue with the present situation? The answer is probably "yes".

For all the difficulties we did cope with the inability of the EU to agree on how to act over Libya. When Germany and Poland refused to be involved, the burden of the military and political responsibility for intervention was carried by France and the UK. Yet crucially it also depended on the US with their military dominance greatest in the first five days taking out the Libyan ground to air missile sites and radar. The EU was, in effect, nowhere yet the command and control experience of NATO was effective and indeed vital through out. It is the very existence of NATO that allows for divisions in the EU.

Over Syria there have not been such great divisions within the EU because there has been no real action. France and the UK have argued a readiness to lift the arms embargo, but that was initially dismissed by a majority and it was not clear exactly how an arms embargo would be lifted just for the opposition forces and indeed it was never intended that all of these forces would be supplied with our weapons. Divisions would immediately appear if the EU Member States ever had to decide whether to intervene militarily over Syria. On the implementation of a no-fly zone over Syria there was no readiness to even contemplate it and in private everyone knew there was no unanimity and in my view for good reasons.

Realism, however, says that the UK should go not one 'inch' or 'centimetre' further on the language within the Lisbon Treaty over Foreign and Defence policy. But that realism has to be set against the oft-stated wish of successive German governments and the present leadership of the CDU, SPD and FDP parties who make no secret of their wish to go further than Lisbon on foreign and defence policy. This view is supported by most of the smaller Member States. I believe that we have already stretched the meaning of words in the Treaty language to near breaking point. We can go no further. Yet all the history of the years of developing the EU of today from 1955 to 2013 demonstrates that the UK will come under much greater pressure from an integrated Eurozone to carry political integration in

foreign and defence policy further.

Here frank discussions between France and the UK is called for. But it would be a major change if France gave up speaking with a forked tongue over EU foreign policy. In reality, President Hollande acted unilaterally over Mali and rightly so in an area of such vital interest. For France there was neither the time nor the inclination to consult with the EU and Baroness Ashton. President de Gaulle acted like this for many years as did all subsequent Presidents and there are many reasons for this. Committing one's country to military action is not for decision within the framework of a 28-nation EU.

It would be a very significant change if France would join with the UK in pooling more of our military resources while saying that by all means consult, discuss and coordinate activity in Foreign and Defence policy within the EU, as we did very happily in Political Cooperation as part of the EEC, but both of our countries will go no further than the Lisbon Treaty. There is, admittedly, no sign whatever that France will do this. The UK could, however, just live with the present amalgam of compromise and confusion in this whole area, but only just. We could opt to stay in the present framework and insist that further integration over foreign policy could only take place within the Eurozone as it becomes a true union. Some in the UK will want to stay in the present foreign and defence set up but they are mainly people who also want to keep open the option of joining the Eurozone at some future date. Keeping one's options open is not a position to be disparaged. But I have come to believe the UK should never join the Eurozone.

For option (b) to be negotiable it will almost certainly be necessary to stay in the foreign and defence structures that were painfully negotiated as part of the Lisbon Treaty. In doing this we are helped by the resolute way William Hague stopped mission creep on coming in as Foreign Secretary by refusing on over 80 occasions any wording on decisions that simply referred to the EU and did not include additional wording saying "the EU and the Member States" were the final authority in these areas of policy. His stance has now reluctantly being accepted but it would be helpful for this to be underwritten in Treaty language. The *quid pro quo* for this would

be that if the Eurozone countries wish to embark at some future date on a single Foreign and Defence policy then that would be their decision, but it would not be an EU policy. Hague's position was no pedantic point but a critical affirmation of a principle that allows the UK on the Security Council to retain its independence and incidentally gives the French a similar freedom.

Eschewing a foreign and defence policy opt out from the negotiations would mean the UK would be making it clearer that we had no intention of undermining the basis of the EU as a body that combines supranational and intergovernmental decision making. We would be accepting the need for the European Commission and this would be emphasised in the modified EEA Treaty by retaining as the single negotiator whoever was the Trade Commissioner. While the UK would likely pursue its existing opt out provision over law and order, subject to sensible adjustments to maintain some cross border provisions. There would be no attempt to restrict in those aspects of the EU that we were still opted into, the jurisdiction of the European Court of Justice; for example as already provided for in the EEA Treaty. This Treaty would only need changing for members not in the EU as now, to be given full voting rights and to reflect this over the existing QMV by bringing in a double majority voting provision for Eurozone and non Eurozone members. In these ways option (b) is redefining the EU to adjust to a very different Eurozone than was provided for in the Treaty of Maastricht.

What of going it alone totally outside the EU and with the modified EEA Single Market? Even in that framework it would not be plain sailing. Probably after giving notice, under Article 50, of our intention to withdraw an arrangement on a bilateral basis of mutual advantage would be made with the EU on Single Market issues within the two year notice period for leaving but I doubt it would be conceded in advance as part of a negotiation. We could almost certainly make a separate UK/Canada trade agreement building on what has been done with CETA and we could probably negotiate with the US in parallel to the US/EU trade negotiations a bilateral deal for the UK. But these negotiations take time and with the best will in the world we might not persuade Canada or the US to negotiate in parallel with their more important negotiations with the EU.

New markets would have to be captured all around the world. We would have to rediscover the virtues of blue water diplomacy and lift our sights well beyond the continent of Europe. There are new markets out there to be captured by our exporters. The City of London in all its many aspects – financial dealings, insurers, lawyers, accountants, actuaries, as well as being served by better infrastructure – would have to price themselves into a position to challenge and compete with an EU financial centre in Frankfurt that will anyhow gain in strength.

No longer would the UK have the EU to blame. But we would be freer as a nation to determine our own future. No longer semi-detached to a Brussels ethos with which many of us have progressively felt uncomfortable. Who can tell what would be the response of the British public to these realities as they emerge. I cannot predict. The old adage of keeping a hold on nurse for fear of getting something worse could be the factor above all which influences voters to decide not to withdraw from the EU.

Above all, outside the embrace of the EU we would have to be far more prudent than in the past over our own economic management, not just in words. We would be responsible for our own finances; we could easily fall back into periodic IMF bailouts. But against that risk the UK is now nearly 40 years on since 1975 and the last IMF visit. The UK is far stronger economically even with less North Sea oil. We are better orientated to earning our living in the markets of the world. Yet in this competitive environment can we build here in the UK a credible social market economy? With greater commitment, and less interference from the EU, can a tried and tested institution such as the NHS in England be reinstated? Can levels of immigration that we can better sustain be maintained outside the EU while still gaining from the potential of immigrants to contribute to our country? Can we, outside the EU, better restore a welfare system based on looking after one's neighbour less fortunate than oneself. A lot will depend on the outcome of the fight to remain competitive, to revive entrepreneurship. Whether the spirit of our forbearers as Merchant Adventurers can flourish. I believe we can do all these things but I would far prefer to do this in the framework of an agreement to permanently stay

out of the Eurozone, opting out of specific EU activities unrelated to the Single Market and the Eurozone. To stay within an EU which is restructured for the whole of Europe. From the Ukraine to Iceland, from Norway to Turkey.

The British people question, with some justice and perceptiveness, that we are witnessing the slow erosion of our independent decision making in the EU and on essential issues that determine whether we are or will remain an independent sovereign nation. They are not extremists who question the direction of travel inside the EU, they are democrats who cannot and will not be fobbed off by politicians from having their say. The Status Quo is not an option. There must be thoughtful change allowing us to be in an EU which can embrace both the previous European Community and the new Eurozone.

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Lord Owen is the author of *Europe Restructured: The Eurozone Crisis and Its Aftermath* (Methuen, 2012)