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# The British European Policy: is it moving towards a “Euro-Pragmatic” Agenda?

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**SUMMARY** After an electoral campaign marked by strong euro-sceptic overtones the government's agreement with the Lib-Dems, who are traditionally more pro-European, has led the Conservatives and David Cameron to review their European policy somewhat. Nevertheless it remains, and in spite of the hope held by some observers, overall the coalition agreement maintains a euro-sceptic line. Failing a fundamental change in the Conservatives' European programme we may however witness a reorientation in David Cameron's European policy on the occasion of its implementation. Indeed the new rules in the European game that are now governed by the Lisbon Treaty oblige the British government to forge alliances to defend its red lines so that it might very well be obliged to move towards a certain kind of “euro-pragmatism” [1].

**INTRODUCTION** The recent failure of the conciliation procedure between the European Parliament and the Council over the European budget 2011 on 15th December last is undeniably, in part at least, the consequence of British intransigence, which of course reminds us of certain episodes in Margaret Thatcher's policy with regard to Europe [2]. However the context is not the same and for the first time in history the Conservatives had to form a coalition with the Lib-Dems after the elections on 6th May last – which meant that David Cameron had to exchange his evident euro-scepticism, which emerged during the electoral campaign, for a kind of government “euro-pragmatism”.

Although the government coalition agreed on a “strong, positive” European policy which adopts, to a significant degree, the Tories' euro-sceptic electoral message, the alliances that are vital within the new rules of the European game may force David Cameron's government to evolve towards a certain type of “euro-pragmatism”.

## THE GOVERNMENT COALITION CAME TO AN AGREEMENT ON A “STRONG, POSITIVE” EUROPEAN POLICY ADOPTING A SIGNIFICANT SHARE OF THE TORIES' EURO-SCEPTIC ELECTION PLATFORM.

In comparison with the extremely euro-sceptic overtones at the start of the campaign the programme set

out by David Cameron with regard to the European policy has undergone two major reorientations.

Firstly, after the Czech President's signature of the Lisbon Treaty on 3<sup>rd</sup> November 2009, David Cameron announced that he was giving up the organisation of a referendum. This decision was inevitable since the UK had already delivered its own ratification, and so Prague's communication of the final ratification automatically led to the entry into force of the Lisbon Treaty on 1<sup>st</sup> December 2009. In these circumstances a referendum would no longer have been focused on political support of the Czech veto but on a hypothetical re-opening of negotiations.

The second change in direction resulted from the coalition negotiations with a Lib-Dem partner who is traditionally more pro-European. This negotiation led to the withdrawal of certain ideas from David Cameron's initial programme such as the negotiation of an “opt-out” from the Charter of Fundamental Rights [3] or the re-nationalisation of social and labour legislation [4]. We should note however that during these negotiations David Cameron was careful not to alienate the most euro-sceptic wing of his party whilst Nick Clegg, the Lib-Dem leader, for his part, was obliged to rank his priorities, placing European issues in second place after the organisation of a referendum on electoral methods – a major strategic issue for the Lib-Dems.

1. The author is expressing his own opinion here and in no way does this engage the institution he works for.

2. Cf. Nicolas-Jean Brehon, “The Crisis over the 2011 Budget: the clash of the intransigent”, *European Issues*, n°187, Robert Schuman Foundation, 29th November 2010 - [http://www.robert-schuman.eu/question\\_europe.php?num=qe-187](http://www.robert-schuman.eu/question_europe.php?num=qe-187)

3. This idea, which was removed from the coalition contract, was expressed by David Cameron during the electoral campaign in his speech on 4<sup>th</sup> November 2009 to the Conservative Party: “Tony Blair told us that he had obtained an opt-out from the Charter of Fundamental Rights (CFR), but he did not. As Ministers have subsequently admitted, he only obtained a ‘clarification’ as to how it would apply. We want to upgrade this to a full opt-out so that the CFR, which for instance would interfere with our trade union legislation, cannot be made to apply in Britain.”

4. “Lastly we want to restore national control over those parts of social and employment legislation which have proved most damaging to the British economy. For instance, we would seek guarantees over the application of the Working Time Directive in our public services, such as the fire service and the NHS.” (David Cameron, “A policy on Europe that people can believe in”, November 4<sup>th</sup> 2009)

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5. Since the idea of the "ratchet clause" is not defined in the treaties the EU provides an explicit list adopting a rather wide ranging interpretation: included in this list, in addition to the clauses that enable the transfer over from unanimity to the qualified majority and the from the special legislative procedure over to the ordinary legislative procedure is the clause enabling the extension of the list of European citizens' rights (article 25 TFEU), decisions affecting the election of MEPs (article 223(1) TFEU), those relative to own resources (article 311 TFEU), and even decisions to modify the number of Commission members (article 17(5) TEU).

6. This was notably confirmed by the declarations made by David Lidington Minister for Europe: "The referendum requirement, or lock, would not catch all amendments or Treaty changes. The lock would cover any proposed transfers of competence – the EU's ability to act in a given area – between the UK and the EU; and transfers of power, such as giving up of UK national vetoes. But treaty changes which do not transfer competence or power from the UK to the EU would not be subject to a referendum. For example, Accession Treaties that transfer competences and power from the acceding country to the EU, and which only amend Treaty provisions to the extent necessary to facilitate the accession, do not transfer competence or power from the UK to the EU, and so consequently would not be subject to a referendum. The Transitional Protocol on the composition of the European Parliament, which would temporarily amend the number of MEPs, does not transfer any competence or power from the UK to the EU and so consequently would not be subject to a referendum." (Written Ministerial Statement – 13 September 2010)

7. "It is only by virtue of an Act of Parliament that directly applicable or directly effective EU law (that is, the rights, powers, liabilities, obligations, restrictions, remedies and procedures referred to in section 2(1) of the European Communities Act 1972) falls to be recognised and available in law in the United Kingdom." (EU Bill - 18 Status of EU law dependent on continuing statutory basis)

Therefore it was according to these domestic policy constraints that the British government set out a European policy defined in the coalition contract as being "strong and positive".

It is no great surprise then that this policy can mainly be said to aim at protecting national interests and pin-pointing the red lines which should not be crossed.

The coalition has promised therefore to oppose any further transfer of competence, notably by adopting new legislation relative to European affairs (the "EU Bill" is supposed to replace the "European Communities Act" dated 1972), which would make the organisation of a referendum mandatory if there were any revision of the treaties affecting the distribution of power and competences and would subject any use of a ratchet clause [5] to the House of Commons. The activation of a ratchet clause leading to a transfer of powers or competence would itself be subject to a "referendum requirement". However, revisions to the treaties which do not modify the distribution of power and competence would not be subject to referendum [6].

This new legislation relative to European Affairs was delivered to the House of Commons and examined on first reading on 11<sup>th</sup> November last – a second reading is planned on 7<sup>th</sup> December.

In addition to this the coalition specifically promised not to launch preparations to join the euro, to defend British interests in budgetary negotiations firmly, not to take part in the establishment of the post of European prosecutor and to limit the implementation of the Working Time Directive.

Finally the coalition promised to examine the timeliness of a law guaranteeing Westminster's sovereignty (the "Sovereignty Bill") without the content and scope of this text being clear at this stage. The British government finally chose to fulfil its promise by including a specific clause into the "EU Bill". On reading this clause one might wonder whether this is not rather more symbolic than legal in value [7].

The positive side of this policy involves the action expected by Europe to help meet world objectives such as competitiveness, global warming and poverty.

But this approach however positive it might seem coincides totally with the declarations made by William Hague, the British Foreign Minister who said "nothing stands between the UK and the world", in other words

the only role to be played by the EU would be to help the UK achieve certain international objectives in the same way, no more, no less, than any other international organisation.

On a more anecdotal note the coalition suggests pushing the idea of having a single seat for the European Parliament in Brussels, which would however require a unanimous decision to revise the Treaties on the part of the Member States since the official seat is in Strasbourg.

Overall in spite of the Lib-Dem participation in the government coalition this programme clearly appears to be marked with euro-scepticism. Other external factors may encourage David Cameron to draw closer to a certain type of "euro-pragmatism".

### ALLIANCES THAT ARE VITAL WITHIN THE NEW RULES OF THE EUROPEAN GAME MAY OBLIGE DAVID CAMERON'S GOVERNMENT TO MOVE TOWARDS A CERTAIN TYPE OF "EURO-PRAGMATISM".

Apart from domestic political factors the British government must take into account the new rules in the European game in the implementation of its European programme since these do not marry well with the British euro-sceptics' tendency towards unilateralism.

Of course the British government can try to stand alone against any transfer of competence that requires the revision of the treaties or the activation of a ratchet clause since in both instances unanimity on the part of the Member States is required.

When it comes to setting out new European legislation or budgetary negotiations the British government must however take into account the new rules that emanate from the Lisbon Treaty notably the generalisation of the ordinary legislative procedure (the new name for co-decision) typified by the use of the qualified majority and greater powers for the European Parliament. Exceptions to the qualified majority rules now only concern some decisions with regard to the CFSP (in practice the founding decisions for new policies or new actions as well as decisions with regard to defence) and some well defined areas in which an "emergency brake" can be activated, i.e. the return to unanimity if a Member State's vital interest is affected (these areas mainly involve the CFSP,

the social security of migrant workers and legal cooperation in criminal matters [8]).

In addition to this the Luxembourg Compromise [9], i.e. the *modus vivendi* which prevailed after the empty chair crisis in 1965 whereby a Member State could challenge a decision which affected "*a major national interest*", although the treaties did include a qualified majority decision, has now by and large become obsolete. Not having any legal force as such it was applied *de facto* because if reference was made to the Compromise its application was supported by a group of like-minded States, the "*Luxembourg Compromise Club*" which comprised a minority block.

Because of enlargement and changes in the rules to calculate the qualified majority it has become increasingly difficult for this group of Member States to form a minority block [10]. Since the UK has more to lose than to win by withdrawing from the EU, the threat of this can hardly be deemed credible. Indeed 55% of the UK's exports go to the EU and half of the foreign direct investments in the UK come from the other 26 Member States.

It is telling to note in this respect that given the recent crisis, whilst being careful to exclude itself from any permanent financial solidarity mechanism in the euro area, the British authorities have said that they had an objective interest in any mechanism that would improve the functioning of the euro area, even if this meant revising the treaties (a revision of the treaties that would aim to establish a solidarity mechanism between euro area members as suggested by France and Germany would not oblige London to organise a referendum since it would not affect the distribution of competence and power between the UK and the Union [11]). The British government also actively supported the initiation of the temporary European Financial Solidarity Fund, including a simultaneous bilateral loan, for Ireland.

Contrary to the situation in Margaret Thatcher's time the UK can no longer defend its interests from a purely unilateral point of view employing either a formal right to veto emanating from the unanimity rule or indicating the right to informal veto using the Luxembourg Compromise in its support. Incidentally this was acknowledged by George Osborne, Chancellor of the Exchequer, who declared that "*Unfortunately we cannot impose our veto on the annual budget.*" [12]

The practical effect for the British European Policy is the quest for alliances within the Council and the European Parliament for the defence of its red lines.

Although the Tory decision to quit the EPP group after the European Elections in June 2009 to form the European Conservative and Reformist's Group (ECR) led to a notable loss of influence – the government coalition incidentally has a significant sphere of influence within the European Parliament thanks to the Lib-Dem MEPs who form, on an equal footing with the Germans, the biggest national group within the "*Alliance of Liberals and Democrats for Europe*" (ALDE). Provided that it shows a certain amount of pragmatism the UK is quite capable of finding allies in the European Parliament to defend its red lines.

The first example of the effective implementation of this approach was during the negotiation on the hedge funds directive (the "*AIFM*", Alternative Investment Fund Management directive), a particularly sensitive issue for London because of the vital interests it implies for activities in the City.

In the first stages of the negotiation of this directive the UK was in the minority over the crucial issue of the European passport for the funds and fund managers from third countries.

Spain which held the European presidency in the first half of 2010 accepted, on Gordon Brown's insistent request – he was then Prime Minister (Labour) – to postpone debate over this directive until the Council after the British elections.

Confronted by this situation and the qualified majority rule the new British government which emerged after the elections on 6th May 2010 chose, contrary to what might have been expected, not to mention the threat to "*major national interests*" according to the Luxembourg Compromise.

During the ECOFIN Council on 18<sup>th</sup> May 2010 it decided however to let matters develop to enable better debate within the context of the European Parliament where it knew it had allies with regard to the European passport. Finally during the 19<sup>th</sup> October session the Council had to rally to the European Parliament's position to enable the adoption of this important element of the financial reform package.

Conversely because of its isolation at the European Parliament over this issue and even though it could

8. Article 31 TEU, article 48 TFEU, article 82 TFEU, article 83 TFEU

9. Final press release of the Council (Luxembourg, 29<sup>th</sup> January 1966), EEC Bulletin, March 1966, pp. 8-10.

10. Philippe Huberdeau, "Le Compromis de Luxembourg est-il encore d'actualité après l'entrée en vigueur du traité de Lisbonne?", *Revue du Marché commun et de l'Union européenne*, n°539, June 2010, pp.362-367.

11. "London to consider altering treaties", *Financial Times*, 20<sup>th</sup> October 2010, "We will look at any proposals. The stability of the eurozone is important to us. But we would not accept anything that involves a transfer of power from Westminster to Brussels" (a British government spokesperson).

12. George Osborne: "Unfortunately, we can't veto the annual budget", *European Voice*, 9<sup>th</sup> September 2010, p.15.

13. The text in this package, subject to the unanimity rule, involves the decision to extend the European Central Bank's mandate to the supervision of systemic risk whilst the regulations targeting the creation of three new European Supervisory Authorities in which the safety clause feature are for their part adopted by the qualified majority.

14. "Welcome to Europe, Prime Minister Cameron" Gérard Errera, former Ambassador for France in the UK, *Financial Times*, 19<sup>th</sup> May 2010

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have called upon the unanimity rule at the Council with regard to one of the texts included in the "supervisory package" regarding the creation of new European Supervisory Authorities [13], the UK did not achieve the goal it had set itself – i.e. a safety clause that could be implemented unilaterally by a Member State for budgetary reasons. Indeed the safety clause that was finally adopted anticipates that a State which wants to challenge a decision taken by a European Supervisory Authority must clearly state why and how the decision in question impinges on its budgetary competence and above all it must in fine submit to a Council decision taken according to a majority vote and not according to unanimity.

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Irrespective of the question of the Conservative positioning in relation to the EPP we might reasonably expect that the British government will move towards a more complex European policy than the simple defence of national interests in order to forge alliances that are vital to the defence of its red lines.

So it is possible that David Cameron's European policy will take the shape of "Euro-pragmatism" bringing him closer to other Conservative British Prime Ministers who took part in European integration such as Harold Macmillan, Edward Heath, John Major [14] , rather than to Margaret Thatcher.

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