

## Designing a new UK-EU relationship and how it could be achieved



*The Eurozone crisis has brought the EU's division into two types of membership into relief, with the euro member states moving closer towards deeper fiscal and economic union, and the others, such as the UK, who remain in the single market with no wish to join the Eurozone,*

*at risk of becoming 'second class' states. **Damian Chalmers, Simon Hix and Sara Hobolt** write that there is now a growing separation between the governance of the single market and the euro area. They propose new reforms which would protect the interests of all EU and non-member states in decision making, give national parliaments a role in proposing and approving EU legislation, and reform the single market to give more sectoral flexibility. All of these proposed reforms, they argue, could be made without Treaty changes.*

There are now two types of membership of the European Union. The first is the Eurozone group of states, heading towards deeper fiscal and economic union – with tight constraints on national macro-economic and welfare policies and potentially new fiscal transfer instruments at some point.

The second is a group of countries who would like to remain in the single market and its associated policies but are unlikely to join the Euro. These two groups are not – to repeat the tired metaphor – two trains on the same track go at different “speeds”. Instead, the two trains are on different tracks heading to different destinations.

Some policy-makers at the heart of British government like to argue that what we are seeing is simply a new version of “variable geometry”, with Britain “at the top table” on some issues, namely defence and the single market, yet opting-out of other issues, such as Schengen and the Euro. However, this conception misses the powerful dynamic at the heart of the Eurozone in the wake of the sovereign debt crisis, which is captured by the political commitment to “do whatever it takes to save the Euro”. This commitment has so far produced the European Stability Mechanism, the Fiscal Compact, the Euro-Plus Pact, 6-Pack, and now 2-Pack of instruments to monitor and shape basic domestic macro-economic policy choices. Building a more tightly governed economic and monetary union is now the driving force for the Eurozone. Regulation or reform of the single market is a secondary concern.

This challenges the constitutional design of the European Union. Two parallel decision-making processes are starting to emerge. The single market is still governed by the Commission, the Council of Ministers, the European Parliament and the Court of Justice, with the European Council as an arena for resolving disputes. The Euro area, meanwhile, is currently governed by the Euro Group and the European Central Bank, and in time there will be pressure for a Eurozone “Finance Minister” and for a subset of MEPs from Eurozone states to monitor the ECB, the Banking Union, and approve the legislative instruments governing macro-economic constraints.

This growing separation inevitably presents risks for the ‘second class’ states only in the single market. These states may be adversely affected by laws developed by the Euro Group. There will also be coalitions between Eurozone states, to serve the exclusive interests of the macro-economic union, which will command majorities in



the Commission, the Council and the Parliament. Imagine a meeting of the Euro Group finance ministers on a Tuesday morning in Brussels, to then be joined by the British, Swedish and Czech ministers for an afternoon meeting of EcoFin to decide on legislation governing financial services in the single market. Of course all the key decisions would already have been made before the “outs” arrive in the room.

One option is complete exit from the EU. But leaving the EU would not secure sufficient autonomy for the UK or any of the non-Euro states. The effects of the EU’s laws are pervasive. Because of the size of the single market and its place as a hegemon in world trade, the EU’s laws are applied widely across the world. The intensity of these external effects grow the closer a state is to the EU and would be particularly intense for a state who had just left the EU, as EU law would still be its default law in most cases.

This consequently leaves the UK and other states not planning to join the Euro caught between a rock and hard place: isolation inside the EU or isolation outside the EU. The challenge for the UK-EU relations is to design a new architecture for Europe, which will allow the Eurozone and prospective Eurozone states to build deeper economic and political integration while enabling the non-Eurozone states to play a full part in the collective governance of the single market.

In building this new architecture we suggest three guiding principles: (1) safeguards for non-Eurozone members, (2) tests for the democratic authority of EU law, and (3) extension of the single market agenda.

The principle of safeguards concerns non-Eurozone states’ influence on EU decision-making as the effects of EU decisions are becoming more sharply asymmetric. Each individual state in the EU only has limited impact on legislative outcomes, and the institutional architecture emerging from the Eurozone means that the states outside the Eurozone are increasingly disenfranchised.

Some EU decisions disproportionately affect one or two states. Usually the interests of these states are taken into account when decisions are made. But states outside the Euro are less likely to have their interests taken into account in decision-making as the process of deeper integration in the Eurozone unfolds. As a result, institutional safeguards need protect the interests of all EU states in decision-making. This protection should apply both to input into EU decisions and to respite from the consequences of these decisions.

With regard to the Eurozone, one manifestation of this input requirement might be that one place on the Executive Board of the ECB be reserved for a non-Euro area national. When the ECB was established, it was not anticipated that it would become the central financial services regulator within Europe. Its decisions will affect the interpretation and application of EU financial services law not merely within the Euro area but across the Union as a whole. If non-Euro area states are to be affected by ECB decisions, it is only right that these states should have some voice on the ECB board, at least as non-voting members.

With regards to potential effects of an EU decision, another requirement might be that wherever a measure affects an industry which comprises either above a certain proportion of a state’s GDP or is concentrated disproportionately within that state, the matter can be referred to the European Council for mediation if that state believes a proposed measure is likely to have a significant negative effect on it. It would, of course, be for the member state concerned to substantiate the case.

A second principle is that of democratic authority. A new test of the democratic authority of EU law is required. If the rationale for EU membership is primarily to join a single market it cannot be right that market rules are developed in a manner that erodes local democratic authority. A test could be devised which safeguards the democratic authority of EU laws with two key components.

First, an EU legislative proposal should have relative democratic authority. For example, it could only be adopted if two-thirds of national parliaments approved it, believing that the relative

democratic benefits of the measure exceeded its costs. Second, EU legislation should be responsive to national parliaments. There is a collective and a national element to this. Collectively, this could entail that if one-third of national parliaments proposed an amendment or repeal of EU legislation, the Commission would be required to put a proposal to that effect. Nationally, this could enable a national Parliament to override an EU measure that is seen to jeopardize vital national interests. In such cases, the matter could be referred to the European Council for mediation by a majority of other national parliaments where these provide evidence that either the process has not been applied in a bona fide way or the costs on other EU citizens is excessive.

It is worth noting that while a strengthening of national parliamentary scrutiny of EU laws may be sufficient to ensure democratic authority for member states outside the Eurozone, it is unlikely to be satisfactory in a more closely integrated Eurozone, where a stronger European dimension of democratic accountability – either through the European Parliament or a directly elected executive – would be needed to legitimize increased macro-economic integration.

The final principle is one of extending the single market agenda. Much of the British debate has focused on the repatriation of powers to the UK, but a cornerstone of any new relationship between Britain and the EU should also be concerned with a positive message to strengthen and reform the single market. As mentioned, the effects of the single market are more pervasive than previously thought. This requires a more ambitious political engagement with these effects.

EU rules both apply across the world and the European multinationals which grew to service the single market have global rather than European horizons. As EU rules are increasingly global rules and European multinationals see themselves as global rather than European businesses, it is impossible to disentangle the single market from the world trading system. A central agenda for the single market must, therefore, be how to secure a more seamless relationship between the Single European Market and other world markets. This is both necessary to secure the position of European industries, but it is also necessary as the EU's market power grants it a unique position to combat the excesses of globalisation.

Within the European Union, the single market has a particularly intrusive reach. Many existing rules in the single market are “one size fits all” and are mainly designed for large-scale global manufacturing. These rules are not ideal for many small businesses who produce goods and services primarily for local markets, and who generate most new jobs in the modern economy. Reform of the single market, with the aim of generating growth and more employment, should hence aim for more sectoral flexibility.

The final question is how such a reformed EU architecture can be achieved. We argue that each of the reform proposals is highly feasible. However, together these, and other possible reforms, are most likely to succeed if they are seen as genuine multilateral improvements rather than as side-payments to the United Kingdom.

In general, these proposed reforms can be implemented without Treaty changes. Reforms concerning safeguarding the interests of non-Eurozone members can be put in place by either a Joint Declaration of the Council, Parliament and Commission or by a European Council Declaration. For example, there could be a Joint Declaration that there would be no Council common position adopted at first reading until national parliaments have given the necessary assent or if a member state believes a matter should be referred to the European Council because key strategic interest is at stake. Equally, reforms relating to the democratic authority of EU law could be set out in a European Council Declaration. The latter, after all, recognised itself as having some authority with its Declaration on the Primacy of EU Law, attached to the Treaty of Lisbon. And, the extension of the single market agenda could all be realised within existing competencies.

However, while these reforms are achievable, there remains a problem of timing. The current preference of the British Government is for multilateral reforms, and indeed this has been

supported by the recent report of the House of Common Foreign Affairs Committee on the *Future of the European Union: UK Policy*. The question, though, is how long this policy will be pursued. The Prime Minister made it clear that he would resort to bilateral renegotiation if there was little prospect of multilateral negotiations succeeding. Many of his MPs want a decision well before the next general election. This will be before the Government's *Review of the Balance of Competences* has been completed (at the end of 2014). Also, the European Union is more likely to only commence a more substantial overhaul of its institutions after the European Parliament elections in the summer of 2014 and the investiture of a new Commission at the start of 2015. There is a strong multilateral case for patience, but if domestic pressures in the UK are too great, the reforms we have suggested could be adopted earlier without pre-empting the Treaty negotiations post 2014.

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*Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.*

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