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Up for grabs? Key issues in the negotiations about Britain's membership in the EU

Waltraud Schelkle

In the run-up to the referendum, the London School of Economics and Political Science (LSE) arranged a series of expert hearings on the future of Britain in Europe. The first four hearings dealt with policy issues that we considered to be important: migration, employment regulation, financial integration, and finally higher education and research. The following articles draw on the discussions that took place between November 2015 and January 2016. The authors were the conveners of the discussions with research interests in these areas.ⁱ

The date of the referendum about Britain's membership in the EU has been approaching faster than foreseen by most pundits. The outcome of the negotiations for reforms to the UK's relationship with the EU did not provide any surprises. Obviously, the negotiations could not have ended so fast if they had not provided David Cameron with some concession on free movement of persons. That the issue of immigration from citizens of other EU member states would become the deal maker or breaker was not foreseen in 2013, when the Prime Minister's Bloomberg speech announced the referendum. In fact, as Eiko Thielemann and Daniel Schade note in their article, immigration did not figure in that speech at all. Its emergence as a dominant issue is a sign that, after the last election, the Conservative government lost its agenda setting powers. The Eurosceptic wing of the Conservative party was no longer disciplined by the will to back 'their' Prime Minister in a coalition.

The response to what David Cameron obtained in the negotiations has also been predictable, ranging from 'disappointed' to fairly cynical: he got what he wanted because he asked for so little. On migration, the UK government got the promise of an emergency brake that would allow it to limit access to certain welfare benefits for newly arriving EU citizens for up to seven years. This compares to more radical steps that were temporarily granted to EU member states at the time of the EU's Eastern enlargements, with all old member states but Sweden and the UK restricting access to their labour markets. It is not a small concession that the possibility of such a temporary suspension has been reopened, since it deviates from the constitutional principle of non-discrimination on grounds of nationality. Labour markets had time to adjust in the meantime and it is not clear what exactly the emergency for UK's labour market is, give an unemployment rate of about 5%. Thielemann and Schade come to fairly sceptical conclusions about the extent to which this and other measures can contain immigration. Austria and Germany prevented free movement for the full seven years after accession, but this did not prevent Central and Eastern Europeans from coming anyway, either as posted workers (formally employed in their home countries) or as self-employed. The denial of full free movement rights just weakened the bargaining position of these migrants and promoted employment practices that undercut resident workers in Austria and Germany. The authors consider it to be one of the myths surrounding immigration that there are any quick fixes.

On competitiveness, the Prime Minister got assurances that the EU is keen to reduce red tape. This is completely in line with the long-standing 'Better Regulation' agenda of the Commission. British civil servants have received an almost free hand over recent months in pursuing this agenda in Brussels. But it is likely to go the way of every national government's promise on the Better Regulation front. Like our own New Year's resolutions, it is worthy of support, temporarily even successful, but an eternal struggle against gravitational forces to the contrary. Steve Coulter and Bob Hancké consider the case for less EU regulation of employment in a nuanced analysis, based on a hearing with a variety of employer and union representatives from the UK. They conclude that EU

regulation of labour markets is certainly a force of adjustment but not predictably more burdensome for some countries than others. This conclusion readily admits that employment regulation coordinated in Brussels can affect different sectors and differently sized firms unequally. But there is healthy contestation over EU regulation which forces it to accommodate different varieties of capitalism and respond to national preferences. It is unlikely that UK regulation of its labour market would be much more liberal outside the EU. It is also unlikely that differentiated EU regulation can be simple and minimalist.

Financial regulation is an area where UK authorities asked for the 'flexibility' to adopt higher standards than EU harmonisation requires. Just as the coalition government previously gave David Cameron an upper hand against its backbenchers, so has EU membership allowed successive UK governments a stronger hand in regulating a vital but risky export industry. The key demand in the negotiations was that EU members that have not adopted the euro should not be disadvantaged by further integration of the euro area. The outcome is a safeguard mechanism rather than a veto: the UK and the other eight outsiders would be able to request formally further discussions of a decision that already has the majority of euro area members on its side. While critics claim with some validity that the Prime Minister's achievements in this area are a measure of his (minor) requests, it also remains that the need for protection was probably overstated, as the track record is that the UK gets what it seriously requests in financial regulation. Successive governments have succeeded in using EU institutions (including the Court of Justice) to protect the UK's status as a financial centre for a monetary union of which it is itself not a member. In short, David Cameron may not have achieved much because there was little left to ask for.

Higher education and research funding are the only two policy areas in our special section that did not figure in David Cameron's negotiations for 'a new settlement'. It is therefore all the more remarkable, as Anne Corbett argues in her article, that prominent voices from the university sector came out spontaneously, and almost unanimously, in favour of remaining in the EU. This happened despite the fact that neither policy area is harmonized or otherwise heavily regulated by the EU. But these voices claim that collaborative EU research projects and student exchange, networks of national research funding bodies and the mutual recognition of student degrees, contribute to the UK's global reach as a centre of study and learning. Brexit may do more harm to these less tightly regulated areas for the very reason that they have been neglected in negotiations. Higher education and research, two major service export sectors for the UK, are also an easy target for retribution, as the Swiss have found. After an out vote, the EU will want to signal to other sceptic members that exit is not an easy option.

The articles in this section are not part of a Remain campaign. Rather, our research suggests that the political dynamic of the negotiations has been favourable for the Leave campaign because anybody promising 'a new settlement' for the UK in a reformed EU runs into a dilemma. The claim that a new settlement is needed suggests that there has been a failure to defend UK interests effectively in the past. But this claim both reflects adversely on the potential achievements of the government now, which has after all been in power previously while major reforms occurred, and understates the ongoing effectiveness of the UK in the EU's regular decision-making processes. The UK civil service has a good record for signalling red lines and fighting competently for its priorities. The UK has been rather successful in a number of areas. This simply has not left many wishes unfulfilled, except in exceptionally hard policy areas, like deterrence of immigrants, to which no civilized and law-abiding government has found humane solutions. The modest achievements of the present negotiations

reflect exactly this state of affairs. David Cameron's campaign to stay in the EU may thus fall victim to the UK's past successes.

ⁱ The reports from these hearings and links to related Brexit blogs can be found on the LSE website: <http://www.lse.ac.uk/europeanInstitute/LSE-Commission/LSE-Commission-on-the-Future-of-Britain-in-Europe.aspx>. We thank Sara Hobolt and David Spence for very helpful comments on earlier versions of our articles.

Maurice Fraser (European Institute, LSE) initiated the setting up of this Commission and was the overall coordinator of it until ill-health forced him to step down from this role. He passed away while this special section went to press. We are deeply saddened by this loss and dedicate our articles to him.