

## Spain's stance on Cameron's negotiations

**Salvador Llaudes** | Research Assistant, Elcano Royal Institute | @sllaudes 

**Ignacio Molina** | Senior Analyst for Europe, Elcano Royal Institute | @\_ignaciomolina 

### Theme

What is Spain's stance on the negotiations for a new settlement for the UK in the EU prior to a referendum on the issue?

### Summary

Spain, like the other EU member states, is finalising its stance on the negotiations being conducted by the European institutions to obtain an agreement between the British Prime Minister, David Cameron, and the other heads of government to restrict the chances of a so-called 'Brexit'. Although some parts of the offer put forward by the President of the European Council in an effort to placate London are of concern from an integrationist perspective, the proposal seems to provide a good basis for arriving at a position that is agreeable to the 28. It is in the strategic interest of the EU in general, and of Spain in particular, to help ensure that the British do not back the exit option in the referendum set to be held in June. On the basis of this reasoning the Spanish government will not raise objections when it comes to forming a consensus, on the strict condition that none of the red lines that have been set in the various sections of the negotiations are breached. The special circumstances surrounding these negotiations, particularly on the domestic Spanish stage, raise a series of procedural issues that shall also be briefly addressed here.

### Analysis

On 2 February the President of the European Council, Donald Tusk, published his proposals (a letter and various appendices in draft-form) to try to satisfy the demands submitted in turn by the British Prime Minister, David Cameron, and ensure that the UK remains in a 'reformed EU'. In the following two weeks the terms of the offer continued to be under negotiation between Brussels, London and the other European capitals. The question is the focus of the Brussels summit of 18 and 19 February.

Given this all-important European Council meeting, it is worth reviewing the state of the negotiations from a Spanish perspective. Ultimately, Spain, like the other member states and the UK itself, finds itself torn between accepting the contents of the Tusk proposals and tabling its own suggested amendments.

Set out below are the four sections of the talks, detailing Cameron's initial requests, Spain's stance and the contents of the proposal currently on the table. It should also be pointed out that Madrid stipulated a generic red line –namely that the agreement with

London should not entail an immediate reform of the treaties—. The fact of the matter is that none of the governments (and this includes London) has the time or the desire to countenance a re-opening of primary law that would moreover involve the complex process of national ratifications.

## Section I: economic governance

### *What did Cameron want?*

The British government was essentially pursuing three goals in this section: (a) the recognition that the EU has more than one currency; (b) the non-discrimination of the countries outside the eurozone vis-à-vis those that are inside it on questions affecting all EU members, especially in terms of the internal market; and (c) the guarantee that citizens of member states outside the eurozone should not have to fund any bail-outs of those that are within it.

### *What was Spain's position?*

The basic aim of Spain in this area is to leave untouched the euro's status as the EU's single currency, and that the agreement with the UK should not involve the member states outside the eurozone being able to veto (*de jure* or *de facto*) the decisions that the 19 deem necessary for the better governance of the shared currency. In other words, while recognising the guarantees of non-discrimination for countries outside the eurozone, the right of those inside the eurozone to advance towards greater economic and political union should also be recognised, without any party being able to impede them.

### *And how was this point dealt with in the Tusk proposals?*

The main Spanish goal is respected and the euro continues to be the EU's official single currency, although for the first time the existence of other currencies in the Union is recognised, just as the British were seeking. There is also acceptance of the need to create a mechanism that, while not serving as a veto or as a brake on urgent decisions, could be used by countries outside the eurozone to avoid discrimination vis-à-vis the others. Likewise, it is accepted that the British do not have to fund eurozone bail-outs (something that, incidentally, has only happened in the case of Ireland, and then it was the UK's own voluntary decision).

## Section II: competitiveness

### *What did Cameron want?*

The UK, gratified by the emphasis the President of the Commission, Jean-Claude Juncker, has placed on cutting regulations and bureaucracy, requested even greater progress towards the elimination of unnecessary legislation, the strengthening of the internal market and the instigation of a clear commitment towards trade policy, with the ultimate goal that the EU should be above all a generator of employment and growth.

### *What was Spain's position?*

There were no particular reservations regarding this section on the part of Mariano Rajoy's government, which also aligns itself with the UK's arguments about the need for a more competitive EU capable of, for example, arriving at an agreement with the US in the TTIP negotiations.

### *And how was this point dealt with in the Tusk proposals?*

The section concerning the improvement of competitiveness is the least politically controversial of the entire talks, although it may be criticised for its emphasis on prioritising this goal over other principles of integration (such as economic and social cohesion). In Tusk's draft proposals, which Spain will have no great problems in accepting, there is the commitment that the institutions will work to encourage the EU's competitiveness, strengthening the internal market, implementing an ambitious trade policy and taking tangible steps towards better regulation. To this end the proposal is to reduce unnecessary administrative burdens on small and medium-sized enterprises via the creation of a mechanism designed to provide safeguards on this issue.

## Section III: sovereignty

### *What did Cameron want?*

The British Prime Minister had three goals in this section: (a) the UK's exclusion from the principle expressed in the treaty regarding an 'ever closer union between the peoples of Europe', such that it should remain clear that it had no irreversible or legally-binding character; (b) an increase in the role of national parliaments, with the aim that these could go so far as to halt the legislative proposals of the Commission; and (c) the guarantee of a greater commitment from the EU regarding the principle of subsidiarity.

### *What was Spain's position?*

Spain had two very clear priorities in this area. First, it wanted to guarantee that the reference to an ever-closer union be maintained in the treaties and that the interpretation placed on this principle should not entail delays to integration or restrictions on the desire of more pro-European countries to continue advancing. Secondly, it wanted to ensure that the changes to the legislative procedure do not transform it into something more complex than it already is. Although it was never presented as a red line, it should also be borne in mind that Spain does not look favourably on the strengthening of national parliaments. This is not only because it would mean weakening the Commission in the regulatory process, but also because this type of system could run counter to the Spanish position (the reality of the situation is that the most active parliaments are found in those member states where public opinion is least pro-European and have, as the recent crisis has shown, the status of creditor nations).

### *And how was this point dealt with in the Tusk proposals?*

The proposal currently on the table explicitly recognises that the reference to an 'ever closer union between the peoples of Europe' is not equivalent to irreversible political integration and, in more specific terms, that the UK is not legally bound to integrate more

deeply into the EU. As far as the second British request is concerned, it is suggested that a 'red card' system is created for national parliaments whereby if 55% of them deem that a legislative project does not meet the principle of subsidiarity it shall be suspended, unless it is modified in such a way as to take their judgements into account. Were this mechanism to be used frequently it would complicate the EU's already fraught legal procedures. It was also decided to establish an additional mechanism to guarantee that the principles of subsidiarity and proportionality are respected.

#### Section IV: immigration

##### *What did Cameron want?*

In order to reduce the number of European citizens arriving in his country, the British Prime Minister wanted to prevent such people receiving UK in-work benefits for four years from their arrival. He also sought to put an end to the situation whereby EU citizens can claim child benefit for their children not living in the UK.

##### *What was Spain's position?*

Although this section was the cause of the fundamental controversy between the UK and other EU countries (especially those countries with a significant number of citizens working in the UK), the stance taken by the current Spanish government was to adopt a relatively low profile for two reasons. First, due to the unique circumstance of being the only member state to have net migratory inflows, since there are many more UK citizens on Spanish soil than vice versa (and, as a related matter, the fact that Spain has complained in the past about the financial burden of attending EU citizens pursuing specific benefits, especially in the field of healthcare). Secondly, and more as a matter of domestic politics, the controversy about the number of Spaniards working in the UK, which the government has tended to downplay and the opposition to magnify, has also had a bearing.

Ultimately Spain aligned itself with EU orthodoxy on this issue, giving blanket support to the principle of free movement of people within the EU as a cornerstone of integration and, as a consequence, arguing that there should be no discrimination on the basis of nationality when it comes to receiving in-work benefits. Spain will only be able to accept an agreement if the benefit-reduction exceptions being sought are well defined and highly restricted.

##### *And how was this point dealt with in the Tusk proposals?*

The two issues raised by Cameron receive a detailed response in the Tusk proposals. With regard to the first, he proposes the creation of a controversial extraordinary mechanism, also known as an 'emergency brake', which if activated would involve the restriction (although not the elimination) of EU workers' access to in-work benefits for a maximum of four years. Although its activation would need to be approved by European institutions, Cameron has also persuaded the Commission to draw up a document stating that the conditions needed to apply such an emergency brake in the UK have already been met. In the [modified draft proposal](#), leaked on 10 February, the possibility of any member state being able to use the emergency brake is ruled out: only the UK

and Sweden have this opportunity, by virtue of being the only countries that fulfil the stipulation of being '(countries that have) not made use of the transitional periods on free movement of workers which were provided for in the Accession Acts'.

As far as the second request is concerned, the proposal is not that the repatriation of child benefit be suspended, but that there should be a modification to Regulation 883/2004 to enable such payments to be indexed to the standard of living of the country where the child resides. A paragraph has been added to the modified draft explicitly stating that the case of child benefits will not be extended to other benefits such as pensions.

### The procedural issues

Apart from the underlying elements analysed above, the negotiations surrounding the British settlement are also accompanied by a series of questions about the procedure of reaching a possible agreement, both at the European and at the Spanish level.

In the event that a consensus is reached, it would need to be expressed in a highly unusual instrument beset by procedural doubts: what is known as the 'Decision of the Heads of State or Government, meeting within the European Council'. This formula seeks to emphasise the singularly intergovernmental and hybrid nature of the potential agreement, which falls half-way between primary law and an ordinary institutional act. In effect, the members of the European Council do not rubber stamp the conclusions of the former institution; rather they solemnly commit themselves as leaders of the 28 member countries to reformulate and reinterpret basic elements of the process of integration. This is a formula that has already been used twice before, and in those cases too it was to adjust to the specific aims of two countries: in December 1992, after Denmark's initial rejection by referendum of the Maastricht Treaty, and in June 2009, after Ireland did the same with the Lisbon Treaty.

In principle, an act such as this need not be ratified by the member states immediately, as became clear in 2009 in the wake of the aforementioned 'Decision' relating to Ireland, and despite the fact that there was a heated debate on this question in the Czech Republic. A quite different question is whether the agreement is subsequently incorporated into primary law in the form of a protocol –as seems to be the intention in the first reform of the treaty that arises– in which case it would be necessary to resort to the ordinary ratification mechanisms. Thus, to continue with the Irish example, the 2009 Decision was not ratified by the Spanish parliament but, coinciding with the accession of Croatia, Organic Law 2/2013, whereby Spain endorses the Protocol regarding the concerns of the Irish people in response to the Treaty of Lisbon was approved four years later. There is a degree of legal debate at the moment about whether or not the agreement with London should be submitted to the Spanish parliament for its immediate blessing and if the answer is yes whether it should take the route of Article 93 (absolute majority) or Article 94 (simple majority) of the Constitution. Recent precedence suggests that waiting is in order and, in this case, it should be done later by means of an Organic Law that ratifies a protocol of EU primary law; in other words via the relatively burdensome mechanism of Article 93.

This legal uncertainty, which is by no means insignificant considering the difficulties that remain before the agreement with London can come to fruition and be subjected to a referendum in the UK, is joined by another procedural issue of a more political nature and stems from the particular domestic situation affecting Spanish politics. The Spanish government's position at the moment is indeed a delicate one, since it has to confront these difficult negotiations with the limited room for manoeuvre that comes from being a caretaker administration. The current opposition requested that the prime minister appear before parliament prior to the European Council to establish a more robust national position. This was a reasonable request in light of the exceptional nature of the circumstances and the negotiations taking place in Brussels, but it is also true that a parliamentary session in the current domestic political atmosphere could have ended up eroding the Spanish position still further if, for example, the occasion had been used to portray the Partido Popular's (PP) minority as imposing some sort of rigid line on the most controversial issues (the figure quoted some days previously by the socialist leader Pedro Sánchez for the extraordinary number of Spaniards resident in the UK possibly pointed in this direction).

In any event, Spain's Prime Minister, Mariano Rajoy, refused to make an appearance prior to the European Council meeting, citing two reasons: (a) that neither regulations nor convention required agreeing the national position in parliament beforehand (although some precedents run counter to this); and (b) that the accountability responsibilities of the present government are limited to contentious jurisdiction and only a Secretary of State who is not performing a caretaker role can appear at these moments before Congress. In the end, although three parties between them commanding an absolute majority in Congress (PSOE, Podemos and Ciudadanos) all demanded an appearance, no session was convened. This striking interpretation of the parliamentary control of caretaker governments has also been relaxed, however, and finally at the request of the PP itself the Foreign Affairs Minister, José Manuel García-Margallo, appeared before the Foreign Affairs Commission of the Congress (since the Joint Congress-Senate Commission for the EU has not yet been established). Rajoy will in any event have to debate the final accord in a parliamentary appearance following the European Council, since this is stipulated by Article 4 of Law 8/1994.

## Conclusions

By way of conclusion it may be said that the draft agreement that is set to redefine the UK's relations with the EU, and that Cameron has already hailed as a success, comes dangerously close to transgressing the red lines Spain had laid down in the four sections under discussion. The conditions also exist, however, for interpreting that they have not been breached.

In any event, the positions of the member states are currently a long way from being aligned. Agreement in the European Council of 18 and 19 February was possible but not certain. If not achieved, it is likely that negotiations will continue in the run-up to the European Council meeting in March, given that the goal is for Cameron to hold the referendum on the UK's permanence in the EU as soon as possible, taking advantage of the political capital he has available.

Independently of everything the EU has at stake in this gambit, Spain and the UK share a great deal (in the economic and business fields, in interpersonal relations, in foreign policy and shared security, in matters involving the balances between member states, and even from the point of view of their territorial complexity) and it is in the strategic interest of both countries to continue being within the EU. For all these reasons Spain can and should play an active role in the final negotiations, with a constructive attitude from the Spanish government and the other parties represented in the Spanish parliament enabling British permanence, although it is reasonable that such an accommodation cannot and should not be at any price.