



## THE COMPETENCE 'CON' AND THE MIRAGE OF REPATRIATING POWERS

This is a cut down version of a more detailed article.

On 23.1.13, David Cameron gave a speech on Britain's future in the EU. He appeared to question its goal of “**ever closer union**” (political union) and stated that power must be able to flow back to Member States, not just away from them. He quoted a political declaration made in 2001 that raised three important concepts: **competence**, **subsidiarity** and the **acquis communautaire**.

EU members must accept the **acquis communautaire** ('the occupied field'). This means that they commit to both the entire body of EU law, such as Treaty obligations; European Court rulings, such as Case Law; and the EU's **goals**. The Court has decided that EU membership obligations produce a **permanent** limitation of national sovereign rights.

The EU's own website also makes it clear that “*The main goal of the EU is the progressive integration of Member States' economic and political systems.* To even discuss the return of lost powers (except through leaving the EU) would seem to be illegal under EU law, as it would go against both the goals of the EU and the letter of the law (the *acquis*).

The Court has ruled that EU institutions that make treaty changes were bound by EU goals, which include **ever closer union** - but could a recent treaty provision reduce 'the occupied field' and bring back powers despite the EU's history of extending its powers? The relevant **Article 48** of the Treaty of Lisbon talks of 'increasing or reducing' the competences of the EU, and of Member States.

The key word “**competence**” (aka 'competency') is loosely defined, relating to EU powers and legal supremacy – but with Member States' sovereign powers limited to a number of essential state functions. Beyond that, they are obliged not just to obey the mass of explicit EU law, but to act in a wider “communautaire” European spirit, towards further **political and economic integration**.

It is academic whether “competences” are classed as for Member States or the EU, if Member States are not ensured sovereign powers and the EU can intervene readily in those areas, on pretexts such as advancing European integration.

It is like the established EU doctrine of **subsidiarity** which sounds like working at the national level where possible. However the previous Blair government confirmed that “**subsidiarity is not about the repatriation of powers**” – and as the interest is producing integration, the EU will make the running centrally if it considers itself better placed than Member States to achieve it.

**In conclusion, any meaningful repatriation of powers while inside the EU is a mirage.**

Article ref: [www.newalliance.org.uk/compshort.htm](http://www.newalliance.org.uk/compshort.htm) This article is produced as a discussion summary – it is not legal advice in any form. Fuller article with references on [www.newalliance.org.uk/competence.htm](http://www.newalliance.org.uk/competence.htm)

Printed & published by New Alliance, PO Box 13199, London SW6 6JY.