

# Five ways the UK deal would change the EU

20 February 2016 | Author: Gregor Irwin

## Summary

*The UK's new settlement won't satisfy Eurosceptics, but does establish principles and precedents that will impact on the EU in future if the UK votes to remain. Some are for the better, while others are risky and potentially damaging. If Britain votes to stay in the EU the prime minister will need to demonstrate that the new settlement really does make a difference. He would not only want to be seen to be using its provisions, but to be pushing and testing their limits. This is partly about setting the right precedents. It also means more confrontation in Brussels.*

Predictably Prime Minister Cameron's 'new settlement' has been dismissed by the UK's Eurosceptics. It includes no new "opt outs", no UK veto on unwanted financial services legislation and no repatriation of powers. Regardless of whether any of these would have been desirable, there was never much prospect of the rest of the EU agreeing to them. The prime minister has however got agreement to some real changes to the principles by which the EU operates. Some of these are for the better, although that is partly a matter of perspective; others set precedents that are risky and potentially damaging.

The new settlement will become irrelevant if the UK votes to leave the EU. It remains to be seen whether the outcome from Brussels has a significant impact one way or the other on the referendum vote. The Brussels jargon and legal language of the agreement doesn't translate easily into soundbites. And on free movement and immigration, what has been agreed falls well short of what many voters say they want.

But assuming that the UK in the end votes to remain in the EU, this note identifies five ways in which the new settlement will change the EU in the future. None alone are transformational, but taken together they are significant.

## Mutual respect between ins and outs

A tension has existed since before the Eurozone crisis between the needs of euro area countries and other member states. The deal on economic governance means euro outs will support further deepening of the euro area in return for "respect" for their rights and competences. The European Commission will underwrite this deal to ensure "consistency" and the "integrity of the internal market". This will also be backed up by specific provisions and a new mechanism to elevate concerns.

The provisions include a ban on discrimination based on currency, albeit with the wide caveat that "any difference of treatment must be based on objective reasons". This would appear to rule out initiatives of the sort pursued by the ECB since 2011 to force clearing houses for euro-denominated products to be located in the euro area. This was contested by the UK, which eventually won the backing of the European Court of Justice. The codification of this principle means the ECB is unlikely to test this again.

The deal contains language that could potentially be used by the UK to constrain initiatives pursued by the euro area that impact on the internal market. The text states that "legal acts, including intergovernmental agreements between Member States, directly linked to the functioning of the euro

area shall respect the internal market, as well as economic and social and territorial cohesion, and shall not constitute a barrier to or discrimination in trade between Member States.” An initiative, such as the Financial Transactions Tax, were it to be pursued in the future by all euro area states, rather than only some as is currently the case, could potentially be covered by this provision and provide the UK with a stronger basis to object to its potential extraterritorial reach.

The economic governance section rules out caucusing by the Euro Group on issues that are the business of the full Council, which includes euro outs. This will serve to prevent influence seeping from the Council to the Euro Group. This is backed by a mechanism that allows just one member state to oppose a decision being taken by a qualified majority where it has “reasoned opposition” based on the principles in the new settlement. In these circumstances the Council shall “do all in its power” to reach a satisfactory solution. Exactly what doing all in its power means in practice will depend on individual circumstances; it might also be tested in the ECJ at some point.

Verdict: This part of the deal would cement the idea that the EU is a multi-currency union. It is also means a genuine reinforcement of the powers of the Council, with a rebalancing of influence away from the Euro Group. This may actually suit some countries in the Euro Group that prefer to have euro-outs in the room when decisions are taken.

### Two rulebooks in one

One of the most contested areas of the agreement has been the provisions relating to the ‘single rulebook’ for financial services and whether this amounts to special treatment for the UK. This has been a particular concern for the French, who have worked hard to tighten the language. The agreed text is a compromise, which serves to illustrate both the broader tensions on economic governance and how these will be managed under the new settlement.

The French concern is that banking union states are unavoidably being driven to a much more uniform approach to regulation, with much less scope for discretion by national competent authorities when implementing the single rule book. Danièle Nouy, who is the President of the ECB’s Supervisory Council, said just this week that the ECB needs “homogeneous rules and a homogeneous way of applying them”. She added that there is not yet a “truly single rulebook” and criticised national discretions from stopping a “full harmonisation of supervisory practices”.

The problem for the French is that they want the UK to also be bound by the same harmonisation of rules and the elimination of national discretions, for fear that either the UK will gain a competitive advantage by adopting weaker regulation, or undermine the reputation of banking union credit institutions by adopting a tougher approach.

The compromise language explains that the single rulebook will apply to all credit institutions across the EU in order to “ensure the level-playing field within the internal market”. However, it also explains that prudential requirements or other legislative measures for the purpose of financial stability may need to “conceived in a more uniform manner” for banking union states with “specific provisions within the single rulebook” potentially necessary.

The essential point from a UK perspective is that this establishes the principle of differentiation. This would allow the UK to argue that banking union states can pursue a much closer harmonisation of rules, and their application, as Danièle Nouy wants, but without the UK being anchored to the same degree. This is exactly what mutual respect between ins and outs must mean in practice.

Verdict: This means that, inevitably, two rulebooks in one will emerge over time. The details will be hotly contested. It is also a double-edged sword for the UK. Differentiation that allows a specific approach for the UK inevitably means less influence over what other states do as they pursue closer harmonisation.

### Multiple destinations

The section on sovereignty makes it clear that the UK is not committed to further political integration into the EU and says this will be incorporated into the treaties when they are next revised. It also says that references to “ever closer union” do not apply to the UK. This is important to the UK, and is particularly valuable to David Cameron as he seeks to assuage concerns within his own party about the erosion of national sovereignty.

The section also makes it clear that references to “ever closer union” in the Treaties are compatible “with different paths of integration being available for different Member States and do not compel all Member States to aim for a common destination.” This is interesting as it has the effect of allowing all countries in the EU to aim for different destinations, even though, unlike the UK, references to “ever closer union” may apply to them.

The sovereignty section makes it clear that competences can only be amended through changes to the treaties, which provides an important line of defence for member states which, like the UK, object to the Commission's occasional practice of pushing the boundaries of the existing competencies with the aim of creating precedents that in effect allow the EU to assume new competences.

The same section also contains a new 'red card' mechanism that allows national parliaments to block legislative initiatives which they object to on grounds of subsidiarity, providing enough of them object within a short period of time. There is justifiable scepticism about whether this will ever be invoked, given the practical difficulties of coordinating such actions, but this will serve as a reminder that national parliaments must not be taken for granted and that the principle of subsidiarity should be respected.

**Verdict:** It is not the red card mechanism that matters, but the clarity on how competences are altered and the strict limits to any obligation to pursue political integration. This matters for the UK, but will also strengthen the hand of countries like Poland and France that are concerned that measures to strengthen economic and monetary union are being pursued in way that impinges unnecessarily on their sovereignty.

### Two Important precedents

The process and the outcome of the negotiation set precedents that may provide EU leaders with cause for concern.

First, on migration, the new settlement establishes the notion of justifiable discrimination. The provisions in this part of the deal need the support of the European Parliament if they are to be implemented. The text also appears to be straining to find a legal basis, which suggests this is one area in particular that might be susceptible to legal challenge. But assuming it survives it raises the question of whether other types of discrimination might also be justifiable. In addition, it is possible other countries may join the UK in invoking the provisions in this section. For now most of the EU is focused on the external migration problem, but the problems this has created internally are among the most politically charged in the EU at present. Other countries might seek ways to slow internal migration flows in future as a means to address the political fallout from the external migration problem.

Second, there is the process itself. David Cameron has committed the UK to a referendum in order to

win concessions and establish a 'new settlement' for the UK. This is a gamble and it is, at the very least, debatable whether the pay-offs are worth the risks for the UK. What he has done is exploit the same 'referendum fear' that has led the EU to avoid treaty change if at all possible. Rejection of treaty changes at the ballot box has in the past allowed Denmark and Ireland to have their own 'renegotiations' that alter their terms of membership. What Cameron has shown is that there is more than one way to use referendum fear to extract concessions. This is likely to be studied closely by other governments that are sceptical about EU integration, or which may feel boxed in by a Eurosceptic opposition, particularly as the deal also makes clear that there multiple destinations for EU integration.

### Conclusion

In end Cameron has done better on sovereignty and economic governance - the areas that matter most for some of his backbenchers and the City of London - than he has on migration, which will be the core issue in the referendum. This may make the deal hard to sell to wavering voters. It also means that if Cameron wins the referendum he will need to demonstrate that this new settlement really does make a difference. This will be essential for Conservative Party management purposes. We should therefore expect that he UK will not only want to be seen to be using these provisions, but to be pushing and testing their limits. This is partly about setting the right precedents, so that it is a British interpretation of the somewhat vague language that prevails. This may, of course, need to be tested in the courts. It certainly means more confrontation in Brussels.

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