

Doing Something Bad for Europe? The UK's Referendum Deal

Published on 09. February 2016 by Alex Brianson

Introduction: The 'realistic' and the bad

The famous wit Mary McCarthy once remarked, 'If someone tells you he is going to make a "realistic decision", you immediately understand he has resolved to do something bad.' Sadly, she died in 1989, but her quip is just as telling when applied to the UK's recent deal on its membership of the EU as to any event in her lifetime. At the time of writing, this deal has to be approved at the next meeting of the European Council on 18-19 February, so it is possible that additions to, or even subtractions from, it could be made. However, it seems likely to comprise the bulk of the deal to be put to UK voters in a referendum, the date for which is as yet unclear, but which must fall before the end of 2017.

It can be assumed that this draft text is 'realistic' insofar as it has been agreed by each EU head of government, which implies they can each live with it. However, it is also safe to assume that the draft deal is a bad one, not so much in its implications for the other Member States, but because it will make the UK's exit from the EU more likely and thus fail to meet its declared purpose of keeping the UK in the Union. For British pro-Europeans, the draft has little to cheer; for Eurosceptics, it has little if anything that could persuade them to change their minds. In this article, I will examine three key issues. First, I will set out the key points of the deal, and establish whether it meets the UK government's declared objectives of securing 'real change in our relationship with the European Union'. Second, I will discuss the likely implications of the deal for the UK government and the referendum campaign. Third, I will ponder the implications of the deal for other member states of the Union, particularly the question of whether it is likely to constitute a model other governments seek to emulate.

The UK's 'New Settlement Within the European Union'

There are four key sections in the draft document, focusing in turn on economic governance, competitiveness, sovereignty, and the freedom of movement of people (especially regarding access to the benefits system in the host country). These are certainly key areas of concern for the UK government, and also for British Eurosceptics. I'll discuss each in turn.

The section on **economic governance** is superficially bland, but in principle could none the less be a useful agreement not only for the UK but for all EU states which do not use the euro. It reiterates existing commitments by eurozone states not to 'discriminate' against their peers with their national currencies, and, although it expects the latter not to 'jeopardise' the functioning of the euro by following incompatible policies with those of the eurozone, it explicitly sets out that the states which are part of the Banking Union may follow different rules from those which are not. This protects the UK system of (extremely light) regulation in the financial sector, meaning that the City of London, which drives the UK economy, can be as neoliberal as it likes. This is a very advantageous outcome for the UK government; although this independence was not in any immediate danger, the agreement means that it will be credible for the government to say the euro has no implications for UK monetary sovereignty, particularly as the Settlement also says that non-euro states such as the UK will not have to contribute to further bail-outs or 'emergency and crisis measures addressed to safeguarding the financial stability of the euro area' (p. 7). The eurozone states reiterate their commitment to allow representatives of non-euro member states to attend all meetings of the Euro Group, even though they cannot vote at such gatherings. This is as much as could have been expected; it makes no difference to the status quo, but gives the UK government a useful commitment that this situation can continue for some time – maybe indefinitely.

The contents on **competitiveness** are brief, and bland – 'motherhood and apple pie' statements with which few mainstream politicians would seek to disagree. They do nothing to shift the EU towards a

new economic model for sustainability, but that wasn't their purpose; in these discussions, 'competitiveness' means shrinking the regulatory requirements on economic actors, and freeing up that old mythical beast, 'the market'. This section has so far been interpreted as pledging the EU to deepen the single market,

especially in emerging parts of the economy and the services sector. I imagine that UK negotiators sought this section for two main reasons. The first is because it gives them an example of success in an area of EU policy that even most Eurosceptics allow has been beneficial, through adopting the Thatcherite wisdom of the UK. The second is because it gives them the ability to point to potential economic gains of staying in the EU, which will be important in an anticipated referendum argument about whether the UK is best served by making its own free trade deals with third countries.

On **sovereignty**, the agreement states that 'ever closer union' is not a synonym of 'political integration', although it does not define what the latter means. This is symbolically important, not least because many pro-Europeans have intended the two terms as equivalents, and the UK is given an exemption from any deepening of the EU's political make-up. That exemption could be a key part of the government's referendum campaign, since it promises that the poor UK cannot sleepwalk into a super-state it does not wish for. The existing 'red card' mechanism that makes national parliaments effectively the guardians of subsidiarity is strengthened. Of course, the system has not been heavily used so far, since its establishment was a function of the Treaty of Lisbon, but both symbolically and substantively the draft settlement text is intriguing here. This is because the present version of the system gives the power to decide whether a proposal for legislation should be withdrawn to protect subsidiarity to the Commission, but the new version of the system, if enacted, would give control to the Council – which means national politicians, representing national governments, and not Eurocrats, will decide.

This section of the agreement is interesting in a way that most popular commentators have not appeared to notice, since it states explicitly that 'ever closer union' does not have to mean the same thing for each Member State. At the policy level, opt-outs have existed for decades now, so this is in one way a mere recognition of fact. However, the EU has so far tended to shy away from elevating differentiated integration to the level of being a normative principle; the draft settlement implies that the EU can live not only with its hitherto-preferred 'multi-speed model', whereby each member state has the same goals but some get there quicker than others, towards a 'pick and choose' model, where states could travel on tracks that are not parallel. This is a momentous step, albeit one that I support (for reasons that differ from those of the UK Eurosceptics), and is likely to have significant ramifications if the settlement is ever implemented.

The final section, on **social benefits and freedom of movement**, is perhaps the most controversial. The agreement reached here is blatantly discriminatory, allowing a member state (not just the UK, in principle) not to provide benefit payments to the nationals of other EU states if there is no 'effective degree of connection between the person concerned and the labour market of the host Member State.' Of course, exactly what this means in law is not yet clear, since the grounds for such a suspension of entitlements must be 'proportional', but they can be undertaken on nebulous grounds of 'public policy, public security or public health' (p. 13). Various exemptions and limitations in access to benefits are proposed, including on child benefits. If formalised, the agreement would make it possible for the government of a host state to pay such benefits not at the level it gives its 'own' citizens, but at the level paid in the claimant's state of origin – which would presumably be lower. This is likely to be a controversial issue in the diplomacy of the UK government between now and the next European Council meeting.

Towards the Referendum

The main problem that Mr Cameron is going to have when trying to sell this agreement to the UK public is that it is so far from the kind of settlement he promised in the Conservative (Tory) Party manifesto for last year's general election. That document pledged 'real change in our relationship with the European Union', saying the Tories would reform the EU institutions, repatriate powers from Brussels, slash the funding given to structural and agricultural policies, and complete what it non-specifically referred to as 'trade deals' (TTIP?). None of this was ever going to be in the UK government's power to impose, no matter who was in charge, and the Prime Minister has not been able to secure agreement to anything like so radical a deal even in issues controlled by the European Council. Where other institutions will be involved – such as the ratification of the settlement, or the commitment to competitiveness, which will presumably be proposed on the single market legal base – there is even less certainty that what has been agreed will become actual EU legislation. Even the ignorance of most UK commentators about the role of the European Parliament here cannot give a permanent get-out-of-jail-free card!

Thus, in the terms he set himself, the Prime Minister's 'new settlement' is an abject failure, even if it contains some useful ammunition for a centre-right pro-EU case. Doubtless this is in great part the result of the domestic politics of the other EU states. I ardently hope that it is also the result of Mr Cameron's constant kvetching and failure to engage with his potential allies in the European People's Party, which will have deprived him of political capital.

As the referendum campaign begins – and there is no fixed date yet, although it must take place before the end of next year – it is likely that certain interesting aspects of British political life will be revealed. First, the principal policy issue at stake is likely to be migration. Because the government has not been able to reduce or reverse migration into the UK from other member states, the 'remain' campaign will be very vulnerable for two reasons: the lack of substantive change in terms of policy, and the demonstration that the UK (or any Member State) cannot unilaterally impose what it wants on its EU partners. I fear this will be the Eurosceptics' main argument. The agreements outlined above about access to social benefits are unlikely to play well in public debate, since they're abstract for the moment and don't do anything to send 'them' home.

Second, the 'leave' campaign is starting with an advantage in terms of public opinion, at least if two recent polls are to be believed. The press and TV coverage of the 'new settlement' has been almost universally critical, and this cannot be expected to change – not least because, measured against the government's own stated ambitions, it's anaemic at best. The two polls I'm about to cite were undertaken for organisations owned by arch Europhobe Rupert Murdoch, so perhaps they should be treated cautiously. However, they were conducted by reputable pollsters. YouGov, in *The Times* of 5/2/16, gives the 'leave' side 45% and the 'remain' side 36%; 61% of those questioned by ComRes for Sky TV on 4/2/16 say it's a bad deal for the UK. Thus, the early indications are that a 'remain' victory would have to come from behind.

Third, the internal wrangling inside the Tory Party may become more open. Mr Cameron has promised to step down as party leader, and Prime Minister, before the next general election in 2020. His preferred successor, the Chancellor (finance minister), George Osborne is set to lead the government campaign, and a key victory appears won even before it has begun, since one of the other two main contenders – the Home Secretary (Interior Minister), Theresa May, has indicated she will support the government. She has made a career of late in EU-bashing and being tough on migration, so this is a surprise likely to be explained in terms of calculations about her future leadership bid. The remaining contender considered so far, Boris Johnson, has sat on the fence. Today's *Daily Mail* – favoured newspaper of the right-wing public – says he has given the Prime Minister a week to convince him that the settlement will protect and ensure the parliamentary sovereignty of the UK. Of course, no such guarantee can be given, not least because such sovereignty has long been eroded by

reforms to the UK state, many of which have nothing to do with European integration. However, in terms of political argument, this could be a key issue: if Boris (the Mayor of London is unique in UK politics for being known, Cher-like, by his first name only) declares himself happy, then that could be a significant victory for the 'remain' campaign. If he doesn't, then the 'leave' campaign will have a huge scalp, and the opening shots will have been fired in the Tory Party leadership contest.

The Labour Party, under Jeremy Corbyn, has said it will campaign to remain inside the EU, in the hope it can be made a more Keynesian, social democratic entity. This positions the main opposition party quite firmly, and is significant because previous statements by Mr Corbyn indicated a possible different stance. The cross-party 'remain' campaign also includes Caroline Lucas, the former MEP and sole Green Party member of the Westminster Parliament, so a significant number of Green voters can be expected to support the 'remain' camp, even if this is a calculation of the head rather than a matter of the heart. The Liberal Democrats, much reduced in numbers since last year's election, will be in favour of remaining inside the EU. UKIP will of course campaign to leave, and will have its task made easier by the weakness of the settlement negotiated by the government.

A final interesting issue to follow will be the reception of the 'new settlement' in the different countries of the UK; however much attention is actually paid to it by most citizens, it is clear that the political cultures of Scotland and Wales are both more left-wing and more pro-EU than that of England, with the likely effect that Scotland and Wales will vote to remain in the EU while England, and thus the whole UK given the disparity in population between the four component parts of the state, will vote to leave. The situation in Northern Ireland will be complicated: there is an across-the-spectrum recognition that peace and prosperity in the province depend on good ties with the Irish Republic, and although many Unionists (those who favour continuing as part of the UK) are instinctively hostile to the EU, they may be outnumbered by more pragmatic voters. It is not beyond credulity that Mr Cameron will be the Prime Minister who took the UK out of the EU and broke his own state in the process, since in the event of such a result as the one suggested above, it is likely that Scotland would insist on a new vote on independence.

Implications for the EU-27

Finally, what does all this mean for the remaining EU states? Possibly nothing at all in terms of direct legal and political change, since the whole settlement will only apply to the UK, and will only apply at all if the UK votes to remain in the EU. Even then, the changes will need to be subject either to Treaty change (via the next accession process, whenever that is) or secondary legislation, which may or may not pass through the 'ordinary legislative procedure'. Ironically, the UK might need the EU parliament to agree to 'protect' its own!

If these hurdles are jumped, then the process could entice other Member States to try similar manoeuvres, but *Realpolitik* indicates they would probably be less successful than the UK has been – which isn't saying much. London has a history of 'awkwardness' that it can draw on to shape debate in its favour – a kind of 'let us have an agreement or we'll have to leave, and we don't really want that, but we'd have to' argument that has some traction because of the UK's size as a market and potential contributor to EU policy, including externally. The Czech Republic, for instance, is truculent and has a reactionary government, but it is hard to see a 'Czechxit' being viewed as a large loss for the EU in geostrategic terms. It's more likely that states would press harder for opt-outs from particular policies, and it is not difficult to see these proliferating. Ireland would have particular difficulties to address if the UK leaves the EU, and not just because of the situation in Northern Ireland and the changes to the governance of the UK and Irish Republic that would result. The UK is Ireland's largest export market, and if a Brexit means tariffs are imposed between London and Dublin, or Belfast and Dublin, then this would be problematic for the Irish economy.

On the whole, though, it may be that the implications of the ‘new settlement for the UK’ are positive for the integration process. If the UK votes to leave, and thus reject the terms contained in the new agreement, then it will become politically straightforward to deny any such request for special treatment from other member states, since it could be argued that such concessions weren’t enough to keep the British inside the Union. It could also prove the case that a Brexit would facilitate deeper European integration, at least for a core of countries, since with London gone the path to deeper economic and political governance would be easier to pave. We shall see.