



An analysis of the deal. In sum, there's little new and it's business as usual.

The first casualty in politics is the meaning of words. Capture the use and meaning of a positive word and it can help you win the battle. The words deployed in the struggle over the UK's dealings are a case in point. The official version of events is liberally sprinkled with "fundamental reform", "re-negotiation", a "UK Settlement", a "special status" that is "legally binding", and "irreversible", as well as other poetic terms such as the PM's use of... "bucket" – all somewhat empty of content.

So avoiding the subjective labelling, what was yesterday's EU summit all about?

To cut it down to its essence this is the "negotiation" the UK should have had at the time of the Lisbon Treaty – an attempt to solve the fundamental issue of whether the UK can, as a non-Euro state, remain in the EU on equal terms. In this negotiation the UK had two cards to play, the fear of smaller members and economically liberal members of losing an EU counter-weight to Germany and Germany's fear of Club-Med secondly a veto over using the EU institutions for further Eurozone integration.

This was therefore not a "re-negotiation" but a straightforward standard EU deal. The UK gives up a veto in return for assurances, small changes and clarifications. These clarifications come in four areas – or buckets. So the UK gains the contents of four 'buckets' in return for handing over a bucket containing a UK veto – a bucket for bucket deal - a pail settlement as David Cameron might like to call it.

Before examining the contents of Cameron's buckets there is an important question of contract law. This deal is not wrapped up in an EU Treaty or even a legally binding EU decision. It is a non-EU agreement, which cannot contravene the Treaties and cannot be enforced via the ECJ. This limits the deal to clarifications and promises. It is true to say that part of the deal takes the form of an international agreement between the states but there is no enforcement mechanism, is covered in caveats and key institutions such as the European Parliament are not a party to the deal.

So is true to say it is "legally binding"? - the short answer is, no, it's merely clarifies the status quo as set out in the EU Treaties, all the rest is political. The longer answer is this, the agreement comes in two parts, firstly, a declaration, which is a political promise in the future to enact an "emergency pause" on financial regulations for non-Euro states – this is a non-legally binding political agreement (bucket 1).

The second part of the agreement is the (arguably) legally binding international treaty between the EU28 acting as member states. This agreement seeks to bind the EU28 to respect and not discriminate against non-euro states (and promises to add wording to that effect into the Treaties at some point), act on economic competitiveness, introduce an informal 'red card' to give national parliaments more influence and (subject to ECJ and European parliament's approval) measures on migrant's benefits (buckets 2-4) all in line with existing treaties.

Whether it is legally enforceable is however a moot point, there is very little in the agreement that the UK could legally enforce on the remaining EU27 even if it was able to.

You may be forgiven for being underwhelmed, but we have not got to the content yet: So taking the buckets in turn lets start with the bucket that contains what the UK is giving up.

UK Veto Bucket

This is essentially a UK pledge to let the Eurozone integrate. Under the agreement the UK will pledges “not create obstacles” to Eurozone integration, “facilitate further deepening” while pledging “sincere cooperation” with the Eurozone. If this agreement was legally binding in front of the ECJ these phrases and others could cause problems. However, unless the ECJ decides to selectively adopt this section, they are probably, like much of the deal, just a political pledge subject to future negotiation.

Verdict: Probably not harmful

David Cameron’s Bucket list

Bucket 1: Emergency non-Euro pause on financial regulation

This has been mislabelled as a “brake”, it is no such thing. This is contained in a declaration where the Eurozone/Banking Union states promise to “discuss” and come to a “satisfactory solution” if non Euro states raise an objection to a measure based on Eurozone discrimination and refer it back to the European Council. Arguably Eurozone states should already not discriminate against the UK, but a political pledge to allow more time to find a solution to potentially controversial Eurozone laws is not a bad idea.

Verdict: Positive, but will not fundamentally change the dynamics of the Euro/non Euro split.

Bucket 2: Non-discrimination for Non-Euro states

In this bucket there is a collection of political promises and guarantees that the UK and its companies will not be discriminated against for not joining the Euro. Included in this bucket is a new pledge that the UK will be reimbursed for any Eurozone bailout. While the agreement reaffirms the “single rulebook” of financial regulation, it does accept that the Eurozone “may need” to apply it in a more uniform manner, rather than do so as a rule.

Verdict: The EU in theory is already not supposed to discriminate against non-Euro states. Clarifying this again is not a bad idea and if the ECJ hears this message that could even be helpful.

Bucket 3: Red Card for EU National Parliaments / Ever closer union

The new “red card” for national Parliaments is really a very pale pink and even less likely than its predecessor the ‘yellow card’ to be used.

This is not to be confused with any proposals to give the UK Parliament more power on its own, this is a mechanism for EU Parliaments to use collectively. Firstly, it requires 55% of all EU Parliaments to disagree with a proposal to initiate it – practically impossible, given it would take parliamentary rebellions all over the EU, it also is only designed to block proposals on a very narrow basis: if they infringe subsidiarity. Given subsidiarity is already supposedly protected these will be rare cases - the card cannot be used on existing legislation or normal proposals however bad. In practice if it is

possible to muster 55% of national parliaments a 35% blocking minority would have already been found in the Council or a 35% for a yellow card.

Added in this section is some wording giving recognition the UK “is not committed to further political integration” and a pledge to add this clarification into the EU Treaties in due course. This is really a restatement of the status quo and will not affect the ECJ’s expansive interpretations of EU power. Although it is probable the UK’s existing Euro opt out may be spun as a new “special status” it is nothing new.

Verdict: Pointless

Bucket 4: Migrant welfare measures

The first thing to note is that these measures will not reduce migration – a serious flaw. The reason is that EU migrants do not come here to claim benefits. A detailed analysis of tax credit claims demonstrates that only 10% of EU nationals claim tax credits in their first year in the UK - 20% by the fourth year. The low take up rate, is not just the complexity of the system, 50% of EU migrants are single and childless, and another 25% are not single but also childless. A single earner without children on the minimum wage will be entitled to less than £10 per month in tax credits.

It won’t cut migration, however it is unlikely to serve any other purpose either and may not come in at all. In order to activate the welfare “brake” the European parliament needs to adopt the legislation, the UK needs to apply to use it, the Commission and European Council need to agree, (it will require UK domestic implementation and IT) it will be limited to an individual for 4 years, will be phased out as soon as it is introduced and the whole policy will be operable for only 7 years. Also in this bucket is a small measure on the exportation of child benefit at a lower rate indexed to the GDP of the receiving state.

Verdict: It won’t cut migration, may never come into force and if it does it will be temporary. It was probably not worth the effort.

Bucket 5: Competitiveness

For completeness is one extra Bucket to mention in passing, and that is “Competitiveness”, a reaffirmation that the EU should “generate growth and Jobs”. Well that is nice.

Verdict: Heard it before

Conclusion:

So how should we describe the deal? It is certainly not a specifically UK settlement and definitely not “fundamental reform” perhaps “reform” but more truthfully this is ‘business as usual’. It is not a “re-negotiation” as the Treaties remain intact. It is reversible in that its effect can be dampened over time by the member states, ECJ and European Parliament and non-binding in that it relies on political good will to be implemented - the UK cannot enforce it. In total the deal has produced some minor changes some positive, a few negative –

Overall verdict: This new EU settlement is therefore best described as “mostly harmless”.

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