The loss of the UK veto over Eurozone integration and legislation

The legally binding element of the 'UK Settlement' is the "*Decision of the Heads of State or Government, meeting within the European Council on 18 and 19 February 2016*" (attached). The Government states this part is an International Treaty[1] but not an EU Treaty or EU Decision. It is enforceable only in International law, which in practice is largely a matter of good faith and politics.

The UK Commitments to the Eurozone

In addition to the elements the Government believe favour the UK the 'treaty' contains commitments from the UK to the EU27, in particular towards the Eurozone. These commitments are, if we believe the Government, legally binding - if not it follows that the rest of the agreement is also not legally binding. The main ones are that the UK:

- "*shall not impede the implementation of legal acts directly linked to the functioning of the euro area*"
- "*will not create obstacles to but facilitate such further deepening"*
- *"refrain from measures which could jeopardise the attainment of the objectives of economic and monetary union."*
- *"mutual and sincere cooperation"* with the Eurozone

What could these UK obligations mean in practice?

The main purpose of these commitments is probably a legal/political one: To prevent the UK raising the issue of renegotiation and the return of powers at the time of the next Eurozone Treaty change as a price for its agreement. As the President of the European Commission Jean Claude Juncker has said:

> "*It would be very nice if we could put this topic into the attic of world history as soon as possible*." [2]

The French President Francois Hollande told the French media after the agreement that:

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[1] PQ: http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-01/29121/
PQ: http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-02-25/28571/

[2] *Telegraph*, 4 March 2016; http://www.telegraph.co.uk/news/worldnews/europe/eu/12184099/Eurosceptics-should-visit-war-graves-says-Jean-Claude-Juncker.html

> *"Today, the United Kingdom has a special place in Europe but there was no exception to the rules of the single market, there are no planned revision of the Treaties and no right of veto over the Eurozone."*[3]

If the UK stays in the EU on these terms the options for future renegotiation have therefore been limited. The Eurozone states believe they have the UK's agreement to continue to pursue political union within the EU's structures.

Inter-relation with the UK's Eurozone safeguards?

One of the purposes of the UK re-negotiation was to attempt to solve the question of whether a non-Euro state with a large financial services industry can protect its interests in a EU where the Eurozone has a qualified Majority of the votes 65%+. To this end the UK has gained a number of 'non-discrimination' commitments.

The final arbiter of whether these has been 'discrimination' would be the ECJ. Until the wording is incorporated in the EU Treaties this wording, sitting outside of the EU treaties, and supposedly in conformity with them, will arguably have little if any force.

It is worth noting that the 'incorporation' of the UK's safeguards is also uncertain it being dependent on a) future Treaty change and b) further negotiation on the drafting as the agreement is just to "substance" of this Treaty.

A further problem for the UK in relying on the wording or attempting to "incorporate" what it sees as the "substance" of the agreement is that many of the parts are contradictory to the extent that the Euro/Non Euro question cannot be said to have been solved.

Contradictions: Problems not settled by the UK settlement, examples from the recent past

- **EU rules on banker's bonuses.** If the UK sort to rely on its non-discrimination commitments to block a measure of this type pushed by the Eurozone the Eurozone could argue back that this was a financial stability measure "*directly linked to the functioning of the euro area"* and that having an opt out could *"jeopardise the attainment of the objectives of economic and monetary union."*

- **Location of euozone clearing in Eurozone.** This has already been litigated on in the Euroclear case.[4] If this or a similar case returned to the ECJ it could be argued that clearing euros in the Eurozone was "*directly linked to the functioning of the euro area*".

- **A Eurozone FTT.** The current Financial Transaction Tax proposal is not specifically a Eurozone proposal – it is being developed under the enhanced cooperation mechanism and is not proceeding very fast. However, if the Eurozone decided to implement a similar proposal to fund its budget, or under the pretext of financial stability, the commitments made in the Treaty could be used to argue that the UK could not block it.

- **David Cameron's 'Veto' on the Fiscal pact given up.** While the UK could not block the Eurozone proceeding outside of the EU architecture the UK could block the Eurozone using the EU treaties

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[3] Le Figaro, 20 February 2016; http://www.lefigaro.fr/flash-actu/2016/02/20/97001-20160220FILWWW00035-brexit-pas-de-derogations-estime-hollande.php

[4] FT, 4 March 2015; http://www.ft.com/cms/s/0/425aeee0-c24f-11e4-bd9f-00144feab7de.html

to pursue integration. If the Eurozone had the UK commitments then the UK could not have blocked the Eurozone using the EU's infrastructure and so incorporation of the Fiscal Compact treaty provisions within the EU Treaties, on the condition the UK would not involve without having to address UK concerns.

The UK stuck in the worst of both worlds?

The argument as to whether the Treaty is legally binding on the parties and/or interpretive or persuasive in the ECJ will continue. However, a number of the EU commitments the UK would wish to see are time limited or dependent on other parties that are not bound by the agreement, for instance the European Parliament, the ECJ, EU institutions and future Parliaments asked to incorporate the "substance" of the treaty into the EU Treaties. The UK may find its ability to use the safeguards limited and constrained by the contradictions.

On the other hand the UK has a good record in upholding International Agreements and in legal, political and practical terms will find it difficult to defend its interests if the Eurozone presents future integrationist measures or policies as ones the UK has agreed not to block.[5]

It is quite possible that over time the Commitments the UK has received will amount to very little and yet the UK may have hindered its ability to block potentially harmful legal acts and policies and political and morally will have given up its most powerful card – the right to veto the use of the EU treaties.

[5] Until 2015 the Ministerial Code included compliance with international agreements and a future Labour Government may reintroduce this provision: Guardian 26 October 2015; http://www.theguardian.com/law/2015/oct/26/ministerial-code-no-10-showing-contempt-for-international-law