

BREXIT:

Remain - The New Reality?

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Brexit: Remain - The New Reality?

Summary

In the ongoing debate on the EU Referendum, attention has been largely devoted to the prospect of the UK leaving the Union and to the implications of such a development. Less time has been given to discussion of the other potential outcome – a decision to ‘Remain’ in the EU.

The European Council, on 18-19 February 2016, agreed a binding Decision ‘Concerning a New Settlement for the United Kingdom within the European Union’ described as “a collection of modest reforms that set out some principles for achieving a more competitive European economy, clarifying the relationship between the Eurozone and the Member States outside the monetary union, curbing to some degree migrants’ access to welfare, giving national parliaments a small stake in EU law making and spelling out that Britain has a special status within the EU.”

A ‘Remain’ vote on 23 June will confront the UK and its EU partners with the task of implementing the February settlement through a mixture of legislation, administrative change and eventual treaty amendment.

Concerns exist in this country about the potential implications of the agreed changes in the area of welfare / child benefits for some Irish workers moving to the UK. And reports from Brussels raise the possibility that special treatment for Irish citizens living in Britain could be under threat as concerns are voiced by Commission officials about the legality of the move.

The UK post-settlement seems very close to the ‘Half Out’ scenario advanced in the IIEA book ‘Endgame’ and it has been characterised as a soft form of Brexit, underpinning the trend of the UK becoming “a more marginal, more mercantilist, less strategic and influential player in the EU.” The symbolic opt-out not just from ‘ever closer union’ but as the Decision puts it, from ‘further political integration’ clearly accentuates the side-lined status of the UK.

However, ‘Endgame’, balances its treatment of the ‘Half Out’ option with discussion of a ‘Half In’ position which could be much more dynamic and cooperative, despite continuing non-participation in key areas. This optimistic outlook requires not just a victory in the referendum, but a solid majority in the UK’s four constituent parts. That would allow Cameron validly to declare the question settled, thereby bringing the “endgame” to an honourable conclusion. And this could offer the opportunity for a new, more positive, British role in the EU at a time of great challenge and, even, threat.

Part 1: Introduction and background to the UK referendum

Introduction

In the ongoing debate on the EU Referendum, attention has been largely devoted to the prospect of the United Kingdom leaving the European Union and to the complex implications of such a development. Less time has been given to discussion of the other potential outcome – a decision to ‘Remain’ in the EU.

Such a choice by UK voters does not represent a return to the status quo. The European Council Decision of 18/19 February 2016 ‘Concerning a New Settlement for the United Kingdom within the European Union’, while widely dismissed as insignificant, contains a number of provisions of potential importance – for the UK, for the European Union as a whole and, in specific matters, for Ireland.

This paper seeks to explain the relevant elements of the European Council Decision, to explore some of the practical issues arising in its implementation, and to discuss the long term implications for British membership of the EU.

The Bloomberg Speech, January 2013

In his Bloomberg speech on 23 January 2013 the UK Prime Minister, David Cameron, heralded the need for a referendum if there was no appetite for Treaty change, with particular regard to the evolving political situation surrounding the euro:

At some stage in the next few years the EU will need to agree on Treaty change to make the changes needed for the long term future of the Euro and to entrench the diverse, competitive, democratically accountable Europe that we seek.

I believe the best way to do this will be in a new Treaty so I add my voice to those who are already calling for this. My strong preference is to enact these changes for the entire EU, not just for Britain. But if there is no appetite for a new Treaty for us all then of course Britain should be ready to address the changes we need in a negotiation with our European partners.

The next Conservative Manifesto in 2015 will ask for a mandate from the British people for a Conservative Government to negotiate a new settlement with our European partners in the next Parliament. It will be a relationship with the Single Market at its heart.

And when we have negotiated that new settlement, we will give the British people a referendum with a very simple in or out choice. To stay in the EU on these new terms; or come out altogether. It will be an in-out referendum.

It is time for the British people to have their say. It is time to settle this European question in British politics. I say to the British people: this will be your decision.

The Conservative Party subsequently won the 2015 election and immediately set about the promised renegotiation. On 10 November 2015, Prime Minister David Cameron wrote to the President of the European Council, Donald Tusk, setting out the UK’s case for reform of the European Union. In this letter, he set out his four substantive proposals under the headings of **Economic Governance and the Eurozone**, **Competitiveness**, **Sovereignty** and **Immigration**, summing them up in clear terms:

Protect the single market for Britain and others outside the Eurozone, in particular establish a set of binding principles that ‘guarantee fairness’ between Euro and non- Euro Countries.

Write competitiveness into the DNA of the whole European Union, including lessening the regulatory burden on business.

Exempt Britain from an 'ever closer union' and bolster national parliaments "not through warm words but through legally binding and irreversible changes."

Tackle abuses of the right to free movement and enable the UK to control migration from the EU, in line with the Conservative manifesto.

Turning to the forthcoming negotiations, David Cameron expressed his confidence that the UK could achieve an agreement that worked both for Britain and the other Member States. Should this be achieved, he said, he would campaign to keep Britain inside a reformed European Union.

The Renegotiation

Through the closing weeks of 2015 and the first weeks of 2016, intensive work was undertaken by all parties to the affair on the issues raised in the Cameron letter. A Commission Working Group charged with handling issues relating to the EU referendum began work. Headed by the senior British Commission official, Jonathan Faull, the group engaged with UK officials and other interested parties and reported directly to Commission President Jean-Claude Juncker.

The UK Prime Minister and other Ministers consulted widely across the EU in preparation for the December 2015 European Council which provided a first opportunity for discussion of the issue by all 28 EU leaders and the Presidents of the European Union institutions.

At the Council, the Prime Minister outlined the four broad areas where he was seeking change and provided an insight into the domestic political dimensions of the issue in Britain. The Conclusions of the Council stated that a political exchange of views had taken place and that following a 'substantive and constructive debate' it was agreed to work towards 'mutually satisfactory solutions in all the four areas at the European Council meeting on 18-19 February 2016.'

On 2 February 2016 the President of the European Council circulated a Draft Decision on what was described as a 'New Settlement for the United Kingdom within the European Union, which was to be the basis for discussion and decision at the scheduled meeting on 18-19 February. The Prime Minister told the House of Commons the draft represented progress in all four areas, but that the process of reaching agreement had only just begun.

Mr Cameron concluded his statement with an argument for Britain's continued membership:

If we stay, Britain will be in there keeping a lid on the budget, protecting our rebate, stripping away unnecessary regulation and seeing through the commitments we have secured in this renegotiation, ensuring that Britain truly can have the best of both worlds: in the parts of Europe that work for us, and out of those that do not; in the single market; free to travel around Europe; and part of an organisation where co-operation on security and trade can make Britain and its partners safer and more prosperous, but with guarantees that we will never be part of the euro, never be part of Schengen, never be part of a European army, never be forced to bail out the Eurozone with our taxpayers' money, and never be part of a European superstate.

That is the prize on offer—a clear path that can lead to a fresh settlement for Britain in a reformed European Union.

The Prime Minister made an important statement on the legal status of the proposed Council Decision: "These changes will be binding in international law, and will be deposited at the UN. They cannot be changed without the unanimous agreement of every EU country—and that includes Britain. So when I said I wanted change that is legally binding and irreversible, that is what I have got. And, in key areas, treaty change is envisaged in these documents."

The Prime Minister's statement – and the Council draft itself – received a mixed reception in the House of Commons and in

the media. While colleagues like Home Secretary Theresa May saw the package offering the “basis for a deal” the Mayor of London, Boris Johnson, said that the Prime Minister was making “the best of a bad job” and that more guarantees were needed over enhancing the UK’s sovereignty.

The Brussels Settlement

The European Council met on 18-19 February 2016 and after lengthy debate agreed a binding decision, *Concerning a New Settlement for the United Kingdom within the European Union*, which Donald Tusk said “strengthens Britain’s special status in the European Union” and addressed “all of Prime Minister Cameron’s concerns without compromising our fundamental values.”

The European Council’s Decision was accompanied by a Statement on specific provisions relating to Banking Union, a Declaration of the European Council on Competitiveness, and Declarations by the Commission on mechanisms relating to Subsidiarity and Burden Reduction, on Indexation of Child Benefits on a Safeguard Mechanism and on the Abuse of the Right of Free Movement of Persons.

Speaking in Brussels immediately after the Council meeting, Prime Minister Cameron said that the deal had delivered on the commitments he made at the beginning of the renegotiation process:

Britain will be permanently out of ever closer union – never part of a European superstate. There will be tough new restrictions on access to our welfare system for EU migrants – no more something for nothing. Britain will never join the Euro. And we have secured vital protections for our economy and full say over the rules of the free trade single market while remaining outside of the Euro. I believe it is enough for me to recommend that the United Kingdom remain in the European Union – having the best of both worlds.

The Referendum Campaign

Initial responses to the Brussels deal

Initial responses to the Brussels deal were inevitably varied.

Across the continent, some comments expressed concern about the emergence of a ‘multi-speed’ Europe which could ultimately threaten the entire project, while others saw the outcome offering the hope that the UK would remain within the EU. A widespread view was summed up by a German journal – “From the start it was all about finding formulations that would allow Cameron to score points at home [...] he got the drama that he apparently needed for the domestic stage.” The former Commission President, Romano Prodi, was quoted as saying that the real consequences of the summit was something “extraordinarily important”: Brussels, he writes, had officially enshrined a multi-speed Europe.

In the UK, the *Open Europe* think tank commented that the deal was neither transformative nor trivial, but that it was a step in the right direction. While regretting that the EU leaders had not taken the opportunity to produce Europe-wide reform, Open Europe argued that British voters should not limit themselves to this question, but should also consider the wider arguments for and against membership and the alternatives that are put forward.

The pro-European *Centre for European Reform* concluded that David Cameron had done better than expected at the Brussels summit, noting that the agreement was at “the upper end of what he could have hoped to achieve.” The CER went on to argue that the specifics of Cameron’s deal contained much good sense: “They recognise the reality that in an EU of 28 plus countries, more differentiated – and complicated – structures will be needed to hold the Union together and enable the very different

preferences of the Member States to be reconciled.”

The *Vote Leave* campaign group condemned the package as breaking the key promises made in the Bloomberg speech and the 2015 Conservative Manifesto: “The only way to get a new UK/EU relationship based on free trade and friendly cooperation is to Vote Leave.” The leading Tory Eurosceptic, Bernard Jenkin MP, asked “Is that it? Is that the sum total of the government’s position in this renegotiation? Britain will end up as a ‘second tier’ country.” And, memorably, Jacob Rees-Mogg MP described the reform plans as “pretty thin gruel.”

The *Telegraph*, describing arguments for greater EU integration as “utopian fantasy” argued that “there is no better way to judge the health of the EU than the arthritic way that it has handled Mr. Cameron’s polite requests for change.”

An *Observer* editorial did not see the Brussels deal as representing a fundamental shift in Britain’s relationship with the EU, but noted that such an outcome was never on the table: “Remain or leave: what the British public decide will be critical for Britain’s economic and social future. It is imperative we move away from the political drama of the last months to make a convincing public case for remaining in the EU.”

Referendum Decision

On the morning after the European Council meeting the UK Cabinet considered the outcome. Prime Minister Cameron spoke to the media in Downing Street, announcing that the UK government’s position would be to recommend that Britain remains in a reformed European Union. A decision to Remain, he said, would enable Britain to “play a leading role on one of the world’s largest organisations from within, helping to make the big decisions on trade and security that determine our future.”

David Cameron then indicated that individual Cabinet ministers would have the freedom to campaign in a personal capacity against the stated government position. In the event, six ministers left Downing Street to take part in a Vote Leave press conference.

The UK Government campaign for a ‘Remain’ vote quickly moved on from the details of the Brussels deal: “Attention will now turn to arguments on the broader benefits or costs of EU membership, the prospect for future EU reform and the alternatives for the UK outside the EU.” (*OpenEurope*)

Speaking in the House of Commons on 22 February 2016 David Cameron extended the argument for remaining in the European Union to areas such as sovereignty and security. On sovereignty he argued that “what matters most is the power to get things done for our people, for our country and for our future. Leaving the EU may briefly make us feel more sovereign, but would it actually give us more power, more influence and a greater ability to get things done?”

The Labour Party leader, Jeremy Corbyn, said that the Brussels deal included elements that the Labour party welcomed, and elements that concerned them. He went on to say that the deal was irrelevant to the choice facing the British people:

We welcome the fact that this theatrical sideshow is over so that we can now get on with making the real case [...] Labour believes the EU is a vital framework for European trade and co-operation in the 21st century. A vote to remain is in the interests of people, not only for what the EU delivers today, but as a framework through which we can achieve much more in the future. But to deliver these progressive reforms [...] we need to work with our partners in Europe and we must ensure that Britain remains a member.

The dissenting Tory ministers immediately set out their position. Justice Minister Michael Gove, in an extensive statement, argued that “the decisions which govern all our lives, the laws we must all obey and the taxes we must all pay should be decided

by people we choose and who we can throw out if we want change. But our membership of the European Union prevents us being able to change huge swathes of law and stops us being able to choose who makes critical decisions which affect all our lives.” He commented that: “I don’t want to take anything away from the Prime Minister’s dedicated efforts to get a better deal for Britain. He has negotiated with courage and tenacity. But I think Britain would be stronger outside the EU.”

From that point the referendum debate increasingly focused on the implications of the Leave option. The term ‘Brexit’ emerged as a shorthand way of saying ‘the UK leaving the EU’ and became the effective *leitmotiv* of the campaign as reflected in most media coverage.

A remarkable collection of essays on the concept of ‘a new settlement’ for Britain, published by the Brussels-based *European Policy Centre* (EPC), has argued that “while the alternatives to EU membership presented by the pro-Brexit campaign seem, at best, lacking depth and credibility, the ‘remain’ camp has equally been unable to set out how the UK can make the most out of its continued membership –relying mainly on arguments about the (highly probable) economic and political costs of Brexit.”

The EPC volume deals specifically with the implications of a ‘Remain’ majority in the referendum. In her analysis of the February agreement, Kirsty Hughes makes the crucial point that the question put to the UK voter means that “there is no chance to vote for the status quo – that is to reject Cameron’s reform package while voting to stay in the EU.” She went on to raise “the question of whether, in the case of a vote to remain in the EU, the Decision will have helped the UK’s position in Europe (‘the best of both worlds’ as Cameron claims) or, on the contrary, will have pushed the UK to the sidelines, with less influence and clout than ever before.”

PART 2. The Content of the European Council Decision explained

The European Council Decision has been described in detail in the UK Government paper ‘The best of both worlds: the United Kingdom’ special status in a reformed European Union.’ This text is quoted in full as it provides a clear insight into the approach of the Government to the future development of the European Union and underlines the reality of the concepts of ‘best of both worlds’ and ‘special status.’

The Settlement

Following months of negotiations, at the 18-19 February European Council the Government secured a new settlement for the UK in a reformed EU, which is irreversible without our consent. This settlement secures all the UK’s objectives, set out by the Prime Minister, and gives the UK a special status within the European Union, as well as setting the EU as a whole on a path of long-term reform. The settlement makes the EU work much better for the UK but there are still many ways in which it needs to improve. The agreement covers four key areas: economic governance; competitiveness; sovereignty; and welfare and free movement.

UK Outside the Eurozone

We have protected the UK’s rights as a country within the Single Market, but outside the Eurozone, to keep our economy and financial system secure and protect UK businesses from unfair discrimination. We have secured agreement to a set of legally-binding principles that will make sure the UK is not penalised, excluded or discriminated against by EU rules because we have chosen to keep the pound.

All the EU’s members formally recognise that the UK should not be forced to participate in measures that are for the Eurozone. Our new settlement secures important protections for the UK in the EU’s economic governance and means that:

UK businesses trading in the Single Market cannot be discriminated against because the UK is outside the Eurozone;

the responsibility for supervising the financial stability of the UK remains in the hands of the Bank of England;

UK taxpayers will never be required to pay for Eurozone bail outs; all discussions on matters that affect all EU Member States will involve all EU Member States, including the UK, not just members of the Eurozone.

The substance of these provisions will be incorporated into the EU Treaties at the next opportunity for Treaty revision. This means that these elements of the Decision will bind the EU institutions, be enforceable by the Court of Justice and have direct effect in the Member States. There will also be a 'safeguard mechanism' which will allow the UK to take its concerns to the European Council if it believes that agreed principles are not being respected.

Competitiveness

As a result of years of UK pressure, working closely with allies, the EU now has an ambitious agenda of economic reform. We have secured a firm commitment to drive that agenda harder over the coming years to help unleash the full potential of the Single Market and create growth and jobs. The Single Market – a market of 500 million people and a quarter of the world's GDP – is the EU's single biggest economic achievement, but it is not yet complete.

The UK has also long argued for reduced bureaucracy and more help for our smallest businesses. Working with allies in the EU, we have helped steer the EU decisively towards an agenda focused on job creation, growth and better regulation.

Our new settlement confirms that:

the regulatory burden on businesses, particularly small businesses, will be reduced with specific targets established in key sectors in line with the approach adopted in the UK;

there will be a new focus on further extending the Single Market to help bring down the remaining barriers to trade within the EU, particularly in key areas like services, energy and digital;

the EU will pursue, with renewed commitment, free trade agreements with the world's most dynamic economies, so that the tariff and regulatory barriers faced by UK companies in large and growing non-EU markets are reduced or eliminated.

The European Council Declaration on Competitiveness covers the key elements of the Decision and indicates that the European Council will keep developments under review, and provides for regular evaluation of progress. The European Parliament, the Council and the Commission have agreed an Interinstitutional Agreement on Better Law Making with the objective of simplifying legislation and avoiding overregulation. The Commission Declaration on a Subsidiarity Implementation Mechanism and a Burden Reduction Mechanism make provision for the concrete steps to be taken to realise these commitments.

Sovereignty

We have secured agreement that the Treaties will be changed in the future so that the UK is carved out of 'ever closer union' and established a mechanism for decision-making to return from Brussels to the UK and other nation states, where this is most appropriate. This is all consistent with the UK's longstanding approach to our relationship with the EU: that it should be based on the practical pursuit of our national interest.

It has been formally recognised for the first time that the UK is not committed to further political integration into the EU and we have secured specific confirmation that the concept of 'ever closer union' will not apply to the UK in the future. This builds

on the statutory requirement in the European Union Act 2011 of the UK Parliament, which makes it impossible for any UK Government to transfer power to the EU in the future without a referendum.

The agreement confirms that EU Member States do not have to aim for a common destination;

national parliaments can combine to block unwanted EU legislative proposals, where the power should not be exercised at the EU level, giving a stronger voice to the UK Parliament.

A new mechanism will be created to review existing EU laws to ensure that decisions are taken at the national level where possible and only at the EU level where necessary (subsidiarity) and that only the minimum action necessary is taken to achieve regulatory objectives (proportionality).

National security will remain the sole responsibility of the UK Government. We, not the EU, decide, issue by issue, when we think cooperation with our European neighbours would enhance our own security;

on issues such as policing, immigration and asylum policy, it is underlined that the judgement on whether we take part in European-level action rests clearly with the UK Government and Parliament.

The Decision confirms the Conclusion of the June 2014 European Council which stated that “the concept of ever closer union allows for different paths of integration”. The substance of the agreement on political integration will be incorporated into the Treaties at the time of their next revision, in accordance with the relevant provisions of the Treaties and the respective constitutional requirements of the Member States “so as to make it clear that the references to ever closer union do not apply to the United Kingdom.”

Social Benefits and Free Movement

We have secured new powers to tackle the abuse of free movement and reduce the unnatural draw of our benefits system, to meet our aim of reducing immigration, by creating fairer rules, while protecting our open economy.

Our new settlement:

will enable the UK to have a new emergency brake to limit full access to in-work benefits by newly arrived EU workers for up to 4 years when they enter our labour market. This will be in force for 7 years.

In future the UK will not have to pay means-tested unemployment benefits to EU nationals who come to the UK as job seekers.

It will mean that Child Benefit paid to EU nationals living here, but whose children live outside the UK will no longer be paid at UK rates but be paid at a rate that reflects conditions – including the standard of living and Child Benefit paid – of the country where the children live.

Commits to new legislation to prevent illegal migrants from using marriage to an EU national living in the UK to avoid our tough domestic immigration rules, and non-EU nationals who marry EU nationals living in the UK will also need to meet our immigration rules.

Ensures greater freedom for the UK to act against the threat of crimes being committed by EU nationals moving around the EU by preventing those who pose a threat from coming into the country and making it easier to deport them if they have been living in the UK.

Elements of the Decision – on child benefits, in-work benefits, marriages of convenience – will require the adoption of

secondary EU legislation under the ordinary Legislative Procedure, with QMV in the Council. This will involve amendment of two EU Regulations and a Directive. Non-legislative action will arise in respect of those parts of the settlement which deal with free movement. The Commission will provide guidelines on the application of EU law. The UK will need to adopt domestic legislation in relevant areas. In some cases implementation will involve the Devolved Administrations.

Conclusions of the UK Government paper

This new settlement builds on a number of existing protections and opt-outs applying to the UK's membership of the EU. This means that the UK now has a special status within the EU – inside those areas of activity where it is in the UK's interest, but outside those where it is not.

The UK is not under the standard obligation for Member States to join the euro. We will always keep the pound.

The UK has remained outside the Schengen border-free area, which means that we maintain control over our own borders. The UK will not join the Schengen border-free area.

The UK has opted out of many measures in the Justice and Home Affairs (JHA) field, while opting in to those which are essential to protect the security of our people.

In addition, the UK Parliament's European Union Act 2011 ensures that no further areas of power or competence can be transferred to the EU without the express approval of our Parliament and the consent of the British people in a referendum – an important democratic lock on any further European integration.

Together, our new settlement and our existing arrangements give the UK a special status in the EU.

We retain our rights as a member of the EU, including our seat in the European Council and our full voting rights and vetoes; but we are outside the euro, outside the Schengen border-free area, outside Justice and Home Affairs measures unless we choose otherwise, while retaining our full say over the laws of the Single Market.

The UK is involved, and influential, in the EU in pursuit of our interests, but we have safeguards and opt outs which protect UK interests too

The task of reforming the EU does not end with today's agreement. But our new settlement gives us the best of both worlds because of the UK's special status.

Speaking in the House of Commons, Prime Minister Cameron stated: "I am proud of the fact that we have a different status in Europe and that that status has become more special with the changes that we have made."

Part Three: Implications for Ireland

Taoiseach and Minister for Foreign Affairs

The Taoiseach, Enda Kenny, and the Minister for Foreign Affairs, Charlie Flanagan, welcomed the Brussels deal, but concerns were soon expressed about the possible impact of the elements of the package dealing with welfare rights of Irish workers in the UK. The Irish Ambassador to the UK had already engaged with the authorities in London to ensure that Irish nationals living in Britain were not affected by any restrictions to benefits which might emerge. Ambassador Mulhall said: "We have of course discussed this issue with the British government, and depending on what the outcome of this whole process might be,

obviously it is a matter that will have to be continued.”

Addressing Dail Eireann on 21 April 2016, in a session devoted to EU-UK Relations, the Taoiseach, Enda Kenny, spoke of the implications of a decision to remain in the EU, and indicated which elements of the agreement would take effect immediately, and which would be implemented at a later date by complementing existing EU legislation:

In the event of a vote for the UK to remain in the EU, the agreement reached in February would take effect. This means that the agreed measures relating to economic governance, competitiveness, sovereignty, and freedom of movement would be effective immediately. Those measures on social benefits and addressing the abuse of free movement would be implemented by amending or complementing existing EU regulations. While they would be taken forward quickly, they would, therefore, not take effect immediately after the referendum.

Two social welfare changes could be implemented as part of the EU agreement. First, child benefit for the children of EU nationals working in the UK could, after a period of four years, be index-linked to reflect conditions in the country where the child lives. Second, access to "in-work" benefits could be limited for four years for people newly entering the UK labour market. This would not apply to any EU citizen already residing in the UK.

The Government has raised with its UK counterpart - at both political and official level - the possible implications of these measures for Irish people in the UK. I have spoken to David Cameron on a number of occasions. The British Government is fully aware of our concerns and of the unique status of the Irish community in Great Britain over very many years.

Irish Government Briefing

A 26 April Government Briefing Note on the UK Referendum¹, circulated to Oireachtas members, states that “issues would arise in the event of a ‘remain’ vote including the question of how changes to UK social welfare/child benefit arrangements as agreed by the EU would impact on newly-arriving Irish citizens.”

The Briefing Note outlines the issues arising from a ‘Remain’ vote and spells out the details of the procedures for implementation of the European Council Decision. On the social benefits issue the Note states that these measures would be implemented by amending or complementing existing EU regulations and would therefore need to be agreed by the European Parliament and the Council of Ministers before they could take effect:

The Government was very conscious throughout the negotiation process of the potential implications of these changes for some Irish workers moving to the UK. Consequently, the situation regarding the Irish in Britain and their unique status over a long period of time, including in regard to the Common Travel Area, has been raised bilaterally at the highest political and official levels, including by the Taoiseach in his meetings with Prime Minister Cameron, and the Minister for Foreign Affairs’ meetings with the UK Foreign Secretary. The British Government is therefore fully aware of our concerns and of the particular situation of the Irish in Britain. Officials remain in contact. In the event of a ‘Remain’ vote, re-engagement on this issue will be necessary as specific new rules are prepared.

Brussels and the Irish position

However, the position of the British Government on these matters is not the only relevant consideration. An *Irish Times* report from Brussels has raised the possibility that the attempt to secure special treatment for Irish citizens living in Britain could be under threat, a concern voiced by European Commission officials:

¹ The note can be downloaded from: http://www.merrionstreet.ie/en/EU-UK/EU_UK_Oireachtas_briefing_note_27_April_2016.pdf

It is understood that officials are focusing on protocol 20 of the Lisbon Treaty, which deals with the common travel area and states that the UK and Ireland ‘may continue to make arrangements between themselves relating to the movement of persons between their territories.’ But officials at the highest level of the Commission are understood to have concerns about the legality of the move, arguing that the relevant article concerns the Common Travel Area between the two jurisdictions rather than a common labour market, a key distinction in terms of free movement. There are also concerns that other Member States could oppose the measure on the grounds that their citizens are being unfairly penalised. In truth, because the provision has never been legally tested, there is no precedent which could predict the outcome of any challenge.

Should the UK vote to remain in the European Union the Commission will be obliged to make provision for secondary legislation to give effect to the details of the February agreement. A legislative proposal on the restriction on in-work benefits will have to be approved by the Council and the European Parliament.

Part Four: Assessment and Conclusions

Assessment and Conclusions

The *Centre for European Reform* summarised the Brussels settlement as “a collection of modest reforms that set out some principles for achieving a more competitive European economy, clarifying the relationship between the Eurozone and the Member States outside the monetary union, curbing migrants’ access to welfare a little, giving national parliaments a small stake in EU law making and spelling out that Britain has a special status within the EU.”

The CER assessment went on to make the point that the Government approach to the renegotiation had made it difficult to make a strong positive case for the outcome. After all, the starting point of the exercise had been generally negative, critical, even grudging in respect of the policies and practices of the Union. And little or nothing was done to counter pervasive misconceptions: “Downing Street deliberately chose not to publicise the government’s own review of EU competences which concluded – in 32 detailed and serious reports, published in 2013 and 2014 – that almost all the powers exercised by the EU were broadly beneficial to Britain.”

A ‘Remain’ vote on 23 June will confront the UK and its EU partners with the task of implementing the February settlement through legislation, administrative change and eventual treaty amendment. The words so carefully crafted by diplomats and finalised in hours of wrangling on 18-19 February must now be turned into reality in the day-to-day life of the Union and justified to its citizens.

This concluding part of the paper seeks to arrive at an assessment of the February settlement in respect of its content, its relevance and its political significance.

Remain: The best of both worlds?

In the House of Commons, Prime Minister Cameron summed up his achievement in Brussels thus:

... our special status means that Britain can have the best of both worlds. We will be in the parts of Europe that work for us, influencing the decisions that affect us, in the driving seat of the world’s biggest single market and with the ability to take action to keep our people safe; but we will be out of the parts of Europe that do not work for us. We will be out of the euro, out of the Eurozone bailouts, out of the passport-free, no-borders Schengen area and permanently and legally protected from ever being part of an ever closer union.

That description of the UK post-settlement seems very close to the definition of the ‘Half Out’ scenario advanced in the IIEA book *Britain and Europe: The Endgame*:

The UK steps back from European integration and puts distance between itself and the Eurozone, while seeking to ensure the integrity of the Single Market. It only joins the initiatives that matter most to it, acknowledging that some interests would take a hit. The block opt-out from Justice and Home Affairs legislation provides a possible template for this position.

The co-author of the IIEA study, Paul Gillespie, has elaborated further on this scenario:

... the Half-out position would not properly resolve Britain’s EU question and could leave the Brexit question to be reopened depending on events and circumstances – notwithstanding Cameron’s insistence that this could not happen constitutionally. Half-out could create a permanent grudging block on the road to deeper integration and probably produce mounting resentment among the UK’s partners over the UK having its cake and eating it too. The prospect of a prolonged and unresolved Half-out position for the UK would raise fears of further contagion and provoke demands for a more decisive break between those pursuing deeper integration and the rest.

A “step in the right direction”?

The *Open Europe* think tank sees the Brussels agreement as “a step in the right direction” and describes it as “the largest single shift in a Member State’s position within the EU. The UK Government had achieved most of what it set out to do – though it could have asked for more. That said, it seems unlikely, given the opposition of a number of other Member States that much more substantial change could have been achieved at this point in time.”

For many other Member States the UK reform agenda was presented – with some of the trappings of an ultimatum – at a point in time when priority needed to be given to major challenges such as the refugee crisis, the evident Russian threat in Ukraine and the Baltic region, the employment crisis in several southern countries and the fragile nature of the democratic systems in some eastern Member States. The potential contagion effect of any deal with the UK was surely not far from the minds of most EU leaders.

Victory or defeat for British exceptionalism?

The Oxford economist, Dieter Helm, argues that a ‘Remain’ vote would see David Cameron emerge victorious from the greatest test of his leadership, having fought and won referenda on three key issues for Britain’s future:

He will have taken head on all three of the big constitutional challenges of our time: the future of our electoral system; the future of the Union with Scotland; and our membership of the EU and he will have won all three referenda. A yes vote would not only transform Cameron’s political position at home, but also his status and power in Europe. It is likely that he would gradually emerge as the most powerful European leader [...] For those in Europe in favour of open liberalised markets, Cameron could be the leader, and he would have the benefit of being outside the Euro. As Europe faces up to the core challenges of migration and the Euro and confronts the far right across much of Europe, Cameron’s version of centre-right moderation stands out from the pack. He would also be a powerful player in the arguments about new EU trading agreements with the rest of the world. Crucially he would have had a positive victory against his own Eurosceptics.

The leading European federalist, Andrew Duff, sees the outcome in different terms. He contends that the referendum campaign has had the effect of accentuating not reducing British exceptionalism:

... the UK will fight even more fiercely to protect its budget rebate and to block efforts at reform of the EU’s financial system.

Britain's self-exclusion from the EU's efforts to resolve the asylum and immigration crises seems more determined than ever. The UK will continue to engage in EU common foreign and security policy only on matters of procedure, protocol and prerogatives, while largely avoiding substance. It will never participate in EU efforts in defence policy. It will block further EU enlargement.

With a UK vote to remain, the Decision of 19 February will have to be implemented, yet Duff argues, it “stands as a massive hostage to fortune.”

In Andrew Duff's view, the proposed legislative changes challenge at least three guiding principles of EU law: free movement of EU citizens, freedom to work and no discrimination on the grounds of nationality: “Changing the rules to restrict in-work welfare (including child benefits) and to enlarge the rights of a Member State to restrict immigration will be very complicated, controversial and protracted. The irony will not be lost on EU law-makers that the changes contained in the decision are unlikely to make a significant difference to the numbers of folk who want to live and work in Britain.”

The Brussels Decision also requires the EU to change its treaties to exempt the UK from the Treaty aspiration of ‘ever-closer union’:

The European Council, in its wisdom, has agreed that the union shall no longer seek one political destination, but several. For the UK, apparently, it is to be ‘never-closer union’; for the rest, however, the implications of ‘not-ever-closer union’ are just beginning to sink in. Who will be tempted to follow the example of the UK, entrenched in constitutional terms as a deviant Member State?

Duff concludes that it is difficult to avoid the impression that a yes vote, especially if close, amounts to little more than a “soft” form of Brexit: “The UK is set to continue to be a reluctant and detached Member State of the union, more often than not weakening the drift of common policy, diluting the force of EU law, and then dissembling about the outcome. The combination of the 2016 decision plus the EU Act of 2011, which imposes on the hapless British voter continuing referenda on all future European treaty change, risks making life nigh impossible for any future more ‘pro-European’ British government.”

Another influential commentator, Kirsty Hughes, of the Friends of Europe, argues that the reforms EU leaders agreed at the February Council are much more significant to the UK's future position in the EU, than to the Union as a whole:

This is not surprising – any genuine, major reforms to EU goals, policies and decision-making would need to go through a full Convention, intergovernmental conference and treaty reform process. They would not focus on the specific demands of one Member State, but on the concerns and strategic goals of all 28. The main concern about the impact of Cameron's reform deal, if the UK votes to remain in the EU, is that it will firmly underpin a trend clear in the last few years of the UK becoming a more marginal, more mercantilist, less strategic and influential player in the EU. While in many ways, the February reform package is a minor side-show compared to the current major tensions, challenges and dynamics in the EU, what the package does do is underline the exceptional disengaged status of the UK. The symbolic opt-out not just from ‘ever closer union’ but as the Decision puts it, from ‘further political integration’ clearly accentuates the side-lined status of the UK.

Reasons for optimism?

The IIEA book, ‘Endgame’, balances its treatment of the ‘Half Out’ option with discussion of a ‘Half In’ position defined as:

The UK does not join the euro but signs up to as many EU initiatives as possible in all other policy fields, similar to Sweden or Denmark. It engages actively and positively in the EU and thereby maintains its place at the Union's top table in spite of the fact that it is not a Eurozone member. The UK could even take the initiative to become a leader in certain policy areas, e.g. security, foreign policy, digital policy.

Paul Gillespie, in his contribution to the IIEA 'Postscript', writes that the Half-in position "would be much more dynamic and cooperative, despite the UK's continuing non-participation in key areas."

Kirsty Hughes asks whether a more progressive and strategically inclined government could rebuild Britain's influence and strategic role in the EU. She argues that a future UK government that had creative ideas on how to tackle the deep challenges in the EU and the EU's neighbourhood would be in a position to build strategic support for its agenda in the EU.

A critical consideration relates to the nature of a 'Remain' victory. The optimistic outlook of a new half-in position requires not just a victory in the referendum, but a convincing one – requiring at least a 55-45% margin overall and a clear majority in England. Paul Gillespie argues: "In that case there would be a solid majority all-round the UK's four constituent parts. That would allow Cameron validly to declare the question settled, thereby bringing the "endgame" to an honourable conclusion." And this could offer the opportunity for a new, more positive, British role in the EU at a time of great challenge and, even, threat.

Britain's future in the European Union following a 'Remain' vote will depend, to a significant degree, on the response of David Cameron. While the post-referendum David Cameron depicted by Dieter Helm could emerge in a real leadership role there is another possibility. It is a fact that David Cameron has been a consistent critic of the EU, speaking of the perception of it as "something that is done to people rather than acting on their behalf." An initial critic of the idea of an 'in/out referendum' he allowed fear of Farage and UKIP to shape his party's policy. He constantly refers to the outcome of his renegotiation as giving the UK 'the best of both worlds' and even produced an official Government report on the Brussels deal with that title.

After 'Remain' Britain will continue to have its opt-outs and derogations and will add to them the changes agreed in Brussels. The question arises of the interpretation of Cameron's statement that "we will be in the parts of Europe that work for us – influencing the decisions that affect us, in the driving seat of the world's biggest market and with the ability to take action to keep our people safe."

Will the UK adopt a positive, progressive approach within the EU institutions, working in collegiate fashion with its partners to deal with the Union's many challenges and to communicate at home the reality of working together to find solutions? Or will the continuing Eurosceptic presence – in political parties, media and the general public – constrain government policies by citing the 'ever closer union' opt-out on further integration and repeating familiar arguments on immigration?

Winning a 'Remain' vote would be a major political achievement in itself. Using that victory to the benefit of the country and of the wider EU will be a daunting challenge for the victorious Prime Minister and all those who promoted the pro-EU cause.

The initial phases of the referendum debate have concentrated on the likelihood and implications of the 'Leave' option. The Brussels deal has not been at the heart of the national discussion. It is important that the debate gives due attention to the implications of a 'Remain' vote which is the desired outcome of the UK Government and of its Irish counterpart. The implementation of the changes agreed in February will be demanding politically and technically and require a significant degree of attention and planning in advance of the referendum poll.

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