

# THE EU-UK AGREEMENT: MUCH ADO ABOUT (ALMOST) NOTHING?

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**A**dopted following unilateral action from David Cameron and permitted by the goodwill of his counterparts, the recent agreement between the European Union (EU) and the United Kingdom (UK) contains a number of reminders and adjustments that are worth putting into perspective from both a political and a legal standpoint. In this Viewpoint, Yves Bertoncini, Alain Dauvergne and António Vitorino focus on three key issues.

## **1. The EU-UK agreement contains a number of useful reminders for the “Eurosceptics” but also for the people of Europe as a whole**

Bearing in mind the barrage of criticism so frequently levelled at the “phantasmagorical” EU, the first thing to highlight are the extremely useful reminders enshrined in the EU-UK agreement.

Regarding “sovereignty”, for example, the agreement reiterates that the EU only exercises those competencies entrusted to it; that it fully respects the free organisation of national welfare systems; and that the UK already enjoys a “special status”, thanks in particular to its non-membership in the Schengen zone or the euro area. The agreement merely takes more formal note of the fact that Britain does not wish to embrace the goal of an “ever closer Union”, yet without preventing other member states wishing to move further in that direction from doing so.

As far as improving “competitiveness” is concerned, the agreement simply specifies that the EU has powerful tools such as the single market and its commercial policy, while pointing out that the Juncker Commission has already laid emphasis on the need to adopt European norms to regulate economic players’ activities, albeit without curbing them.

Regarding relations between the member countries in the euro area and those outside that area, the agreement states that the latter countries are not bound to fund bail-out plans for euro area member countries in difficulty such as Greece (the UK opted of its own accord to fund a part of Ireland’s bail-out plan) and that the rules governing the “banking union” only apply to banks whose headquarters are situated in one of the countries that have subscribed to it.

And finally, where the freedom of movement is concerned, the agreement recalls the content of existing European regulations, outlining a number of misconceptions harboured even outside the UK: it is not possible for inactive citizens to take up residence in another EU country unless they have sufficient financial resources for their upkeep, and it is even less possible for them to do so if their sole aim is to obtain welfare benefits; social benefits are not handed to Europeans unconditionally; it is necessary to combat any infringement or fraud ascertained in connection with access to welfare benefits; and so forth.

## **2. The EU-UK agreement contains a limited number of substantial “reforms” whose implementation will need to be closely monitored**

The EU-UK agreement contains four main innovations regarding relations between the EU and its member states. While these “reforms” are not particularly inspiring in terms of the spirit or the letter of the EU treaties, they may nevertheless seem acceptable to anyone prepared to consider Britain’s specificities. Though having said that, their implementation is going to require close monitoring.

National parliaments may now block, rather than simply hinder, any European regulatory initiative if they consider that it fails to comply with the principle of subsidiarity. This “red card” cannot, however, be deployed by only one parliament on its own, even if it is Westminster; it requires that at least half of the EU’s national parliaments agree with it. Inspired by the “yellow card” and “orange card” already in place and used on just two occasions, it may prove to be a useful alarm pull in the face of the EU’s alleged legislative encroachment, but only

as long as it does not trigger any anti-Brussels guerrilla warfare.

If any single country that is not a member of the euro area (thus the UK if it so wishes) feels that a decision or norm in the process of being adopted by the "Eurogroup" might damage its interests, that country may demand a fresh debate at the European Council level. This is not a "right of veto" so much as "observer rights", and it will be necessary to ensure that they are used without hampering the proper functioning of the euro area. The scope of the "reform" invoked in connection with the regulation of financial services is less certain: while pointing out that financial services operating in the context of the single market have to apply a single rulebook, it specifies that specific adjustments may, if necessary, be adopted in the context of that standard legal framework...

The most striking reform concerns the free movement of workers: it does not impact European citizens already resident in the UK; nor does it prohibit other European workers in any way from continuing to try their luck in the UK; but it does stiffen the terms governing access to "non-contributive" social and fiscal benefits, in other words benefits for which workers have not yet paid in any contributions. That access would become gradual, only allowing full and equal access after a maximum of 4 years, on the basis of a safeguard mechanism that can be invoked for 7 years, the exact duration of the safeguard clause which the UK enjoyed from 2004 to 2011 to restrict the free movement of Central European workers, although it never once used it. The agreement also offers member states a new "option", allowing them to tailor family allowances paid to children who have remained in their parents' country of origin to the standard of living in that country and to the level of family allowances paid in that country. The exact terms on which the safeguard mechanism and this "option" can be implemented have yet to be specified in legislative texts issued by the Commission and adopted by the European Council and Parliament: it is going to fall to these institutions to ensure that those terms conform in full with Community law, under the oversight of the Court of Justice, but also to ensure that they do not set a precedent which countries might be tempted to exploit in an effort to build further obstacles to the free movement of workers.

### 3. The EU-UK agreement is likely to have only a limited impact on the European construction

The text of the EU-UK agreement is not necessarily going to play a major role in the British referendum campaign, which is more likely to be affected by the political and diplomatic context governing the stormy relations between London and Brussels. But at least its adoption allows David Cameron and those in favour of staying in the EU to start campaigning ahead of the vote on 23 June.

It seems excessive to imagine that the conclusion of an agreement of this nature might prompt other heads of state and government to organise a referendum on membership to obtain similar concessions, given that the tide of Euroscepticism and Europhobia has reached unprecedented levels in the UK, and considering that their counterparts would not allow "Europe à la carte" to become the rule rather than the exception. It is one thing to say that one does not like the EU, but quite another to choose to leave it: the Union is not a prison, and we cannot rule out the possibility that even the British may cross the line between displaying their disenchantment and facing the risks of a break, with all of the uncertain consequences that that entails.

Aside from that, the slightly more "special status" from which the UK might benefit if a majority of its citizens choose to remain in the EU will only underscore the differentiation around which the European Federation of nation states evoked by Jacques Delors needs to get better organised: this presupposes a dual positive agenda, at the level of the EU as a whole and at the level of the euro area, which it falls more than ever to the European and national leaders to design.

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When all is said and done, there is one major advantage to be gained from the conclusion of the EU-UK agreement: it now allows the people and leaders of Europe to turn their attention to the other pressing challenges that they need to face together, particularly the refugee crisis and the terrorist threat, which are far more crucial for the EU's future and for its citizens' well-being and prosperity.

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