



Britain's special status in Europe:

A comprehensive assessment
of the UK-EU deal and its consequences

Andrew Duff

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Policy Network
Second floor
11 Tufton Street
London SW1P 3QB
United Kingdom

t: +44 (0)20 7340 2200
f: +44 (0)20 7340 2211
e: info@policy-network.net

www.policy-network.net

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Summary

Three years of 'renegotiation' of Britain's terms of membership of the European Union culminated at the meeting of the European Council on 18-19 February 2016. A new settlement for the UK was drafted in the form of a set of arrangements covering sovereignty, economic governance, competitiveness and the mobility of EU citizens. The new 'special status' of the UK will become legally binding if and when the British people vote to remain in the EU at the referendum on 23 June. But what does the agreement entail, and how will it affect not only the ties that bind the UK to membership of the EU but also the future of the European Union as a whole?

Andrew Duff describes the process that led up to the agreement and analyses the main features of the decision. He concludes that the deal is more problematic than it is claimed to be by the UK government but he dismisses the argument of the Eurosceptics that the outcome of the renegotiation is insignificant. He warns that its implementation in terms of both primary and secondary law will be complex and drawn out. He suggests that the settlement presages the development of a new form of second-class membership for the UK, and argues that the threat of Brexit will have nudged the rest of the EU forwards to fiscal and political union.

About the Author

Andrew Duff is a visiting fellow at the European Policy Centre in Brussels. He was formerly a Liberal Democrat MEP, president of the Union of European Federalists, and director of the Federal Trust. He tweets @AndrewDuffEU. His latest publication is *The Protocol of Frankfurt: a new treaty for the eurozone* (2016).

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Cover image credit: Arron Hoare

Introduction

At 22.30 on Friday 19 February, Donald Tusk, president of the European council tweeted: “Deal. Unanimous support for new settlement for #UKinEU”. Tusk had laboured long and hard over the previous 36 hours to broker the agreement on a text that, he claimed to the press, “addresses all of David Cameron’s concerns without compromising our fundamental values”. He went on: “We have achieved a legally binding and irreversible deal ... strengthening Britain’s special status in the EU”.

Tusk can be forgiven for a bit of self-satisfaction. Cameron’s approach, which was curiously incoherent, had been difficult to manage. He had swerved away from the terms of his original Bloomberg speech in January 2013, in which he spoke of “EU reform”, until 10 November 2015 when, in a speech to Chatham House and in a letter to Tusk, he had set out some limited but specific objectives in four ‘baskets’ of economic governance, competitiveness, sovereignty and migration. It was not until the night of 17 December, at a dinner of the European council, that Cameron secured the agreement of his fellow heads of government to work together to find a mutually satisfactory solution. The target of a special European council called for 18-19 February was set, and Tusk promised to bring forward a ‘concrete text’ in due time. A first draft text was given to the press on 2 February, and a second leaked 10 days later. The final text, altered importantly from the first version, appeared after the leaders’ late dinner. It is called a *Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union*¹ (hereafter ‘the Decision’).

It was notable that in his press conference immediately after the close of the meeting, David Cameron managed to avoid a detailed discussion about the Decision by moving on to other less legalistic and more emotive things – such as the need for security and love of his country. Nevertheless much has already been written and said – and will continue to be written and said – about what the Decision means for Britain as it squares up to its 23 June referendum on staying in or getting out of the EU. I will concentrate here on examining the implications of the Decision not so much for the UK but more for the European Union as a whole.

For the purposes of this essay let us presume that the British will vote to stay in the EU, mainly on the grounds that the leavers are a disparate bunch of folk with no clear prospectus of what would happen if Britain left, and that the British people are essentially conservative, inclining towards the status quo. Unless pride over sovereignty trumps engagement in power politics, Brexit seems fairly pointless and risky.

However, if the British voters confound expectation and choose Brexit, the Decision of 19 February will lapse in its entirety. It will not be available as a bargaining chip for the UK government to deploy as it embarks on secession negotiations under the terms of Article 50 of the Treaty on European Union (TEU). The annulment of the Decision in such circumstances was assured by the European council after an intervention by the Belgian prime minister, Charles Michel. In its conclusions after the meeting, to which the Decision is annexed, the European council understands that if the Brits say no, this “set of arrangements ... will cease to exist” (paragraph four).

1. www.consilium.europa.eu/en/policies/uk/2016-uk-settlement-process-timeline/

For several months British government ministers were insisting that its EU deal should be ‘formal, legally binding, and an irreversible guarantee.’ Well, formal it now surely is. The European council agreed that the Decision constitutes “an appropriate response to the concerns of the UK government”. It went on to observe that the heads of state or government declare that the Decision gives a legal guarantee to Cameron and that the “content of the Decision is fully compatible” with the EU treaties (paragraph three). However, note the distinction, which Cameron finds arcane, between the conclusions of the European council on the one hand, and the act of the heads of state or government on the other.

How binding is legal?

The actual Decision belongs to the heads of state or government alone and not to the European council. Under the terms of the Treaty of Lisbon, the European council cannot legislate for the European Union (Article 15(1) TEU). Neither can the European council initiate, still less bypass, the EU’s official treaty revision process that is laid down in Article 48(2). The procedures for revising the treaties involve not only the heads of government but also the European commission, the European parliament and national parliaments, meeting together in a convention (Article 48(3)). True, the heads of government have the last word on EU treaty change (Article 48(4)), but they do not have the first word.

So the Decision takes the form of an intergovernmental agreement lodged at the UN and applicable under international, not EU law. The Decision will become legally binding under international law if and when the British decide to stay in the European Union. In theory, as the European council asserted, the Decision will remain legally binding until revoked by a unanimous decision of the 28 governments; nevertheless, as the personnel at the summit changes, which they do fairly frequently, the deal will become less authoritative, and may be amended, reversed or ignored. In any case, the substance of the Decision will not be binding on the EU as such until its provisions have been transposed into EU law – either into primary law via treaty change with respect to the sovereignty and economic governance dossiers, or through secondary law via the ordinary legislative procedure in the case of the social welfare and migration issues.

The Vienna convention on the law of treaties (1969) allows member states of international organisations to reinterpret the statutes of their organisation to accommodate new facts. But the signatories are not allowed to abrogate their commitment to the organisation unless the statutes expressly allow them to do so, and they act accordingly. Specific clauses of a treaty can be denounced but only if they are not an essential basis (Article 44(3)). Importantly, any fresh interpretation of the statutes must respect the substantive provisions of the original. As the EU treaties tend to say what they mean and mean what they say, the scope for innovatory interpretation is relatively limited. Moreover, EU states are bound to respect EU law even when they act outside the European Union framework. And they are bound to settle disputes about the interpretation of the treaties within the framework of the European Union – that is, via the European court of justice (Article 344 of the Treaty on the Functioning of the EU (TFEU)).

Cameron and his colleagues often cite as a precedent for what they are trying to do the experience of Denmark and Ireland, both of which previously had to overcome stalled ratifications of an EU treaty by asking for supplementary provisions. But this is a false analogy for Britain. Denmark and Ireland took alleviating steps in order to bring into force draft EU treaties that had been signed and sealed by everyone else. As such, the Danes and Irish were going with grain of European integration, and nothing in their respective package deals changed materially the content of the original.

In the British case, however, both the content and the context are very different. Far from helping the European Union out of a difficulty, the UK is attempting to change the terms of an EU treaty that has not only been signed and sealed by everyone, not excluding the UK, but has already been in force for over six years without any startling change of the basic facts that might justify its reopening.

There is no precedent for what the UK is trying to do – which is, in effect, to overturn unilaterally its existing treaty obligations. Cameron’s attempt at subversion is found in its most acute form in his ‘sovereignty’ dossier in which he seeks to disapply for the UK its commitment to the “ever closer union of the peoples of Europe”.

Not ‘ever closer union’

The phrase is not new: in fact, it appears first in the Treaty of Rome (1957), was repeated in the UK’s own treaty of accession to the European communities in 1972, and has been repeated in subsequent EU treaties all signed and ratified by the Westminster parliament. In Maastricht (1993) the phrase was elevated from the preamble into the first clause of the new Treaty on European Union. It serves as an expression of the historic mission of the European Union and predicates everything that follows (values in Article 2, objectives in Article 3, and so on). It is true, as the UK government points out, that Article 1 has never been used as the specific legal base for any piece of EU secondary law. It is not true, however, that ‘ever closer union’ is of only marginal importance: indeed, if it were only of marginal importance why should Cameron be so keen to disinvest himself of it? The phrase has certainly been cited in the jurisprudence of the European court of justice (somebody counted 53 times). For the court, ‘ever closer union’ embodies the quest for trust among states without which integration is improbable. The legal and symbolic significance of the term must not be ignored.

‘Ever closer union’ – in French, *‘une union sans cesse plus étroite’* – does not define the final destination of the European Union as a federal state, but, rather, evokes the process of continual unification in order to combat the (historically powerful) forces of disunity. The entrenchment of the words in the treaties has allowed, over the years, plenty of intermediate steps to be taken in a federal direction. The term does not in itself confer new competences on the European Union or give new powers to its institutions, but it does bring a sense of purpose and direction to the unfinished business of building a united Europe.

How did Donald Tusk deal with Cameron’s demand that Britain should be allowed to opt out of its previous commitment to ‘ever closer union’? At first, not well. In the early drafts of the Decision an amateurish attempt was made to define the term in order to please everyone. The European Union having survived quite happily for nearly 60 years without an explicit definition of ‘ever closer union’, such an exercise deserved to fail – and did.²

In June 2014 the European council had already sought to placate David Cameron, angered by the election of Jean-Claude Juncker as president of the commission, by concluding that differentiated integration among member states was perfectly possible. It noted that:

“the concept of ever closer union allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further”.

Although those conclusions of the European council were studiously quiet on whether ‘different paths’ would lead to different destinations, the concession proved to be something of a hostage to fortune. It certainly did not satisfy Cameron who was led subsequently to demand a clear and exclusive British opt-out – “no ifs, no buts” – from ‘ever closer union’.

2. The result of the efforts of Tusk and the council secretariat was fair gibberish, but worth quoting for the record: “References in the Treaties and their preambles to the process of creating an ever closer union among the peoples of Europe are primarily intended to signal that the Union’s aim is to promote trust and understanding among peoples living in open and democratic societies sharing a common heritage of universal values. They are not an equivalent to the objective of political integration” (after which, in the second draft, was added “even though such an objective enjoys wide support in the Union”).

Fortunately for the prime minister, the federalists were, for once, on his side. Unwilling to pollute the meaning of ‘ever closer union’ for everyone else, their spokesmen in the European council, led by Michel, and in the European parliament, led by former Belgian prime minister (and fellow liberal) Guy Verhofstadt, insisted that the worst of the verbiage should be scrapped and that the critical paragraph that had appeared at the end must be elevated to the top. The beginning of the section on sovereignty now reads:

“It is recognised that the United Kingdom, in the light of the specific situation it has under the Treaties, is not committed to further political integration into the European Union. The substance of this 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.”

It is therefore clear that the UK and the UK alone, has the promise of an exemption from ‘ever closer union’, just as Cameron wanted. It is unfortunate that the Decision does not stop there, but rambles on to assert that the phrase “should not be used either to support an extensive interpretation of the competences of the Union or of the powers of its institutions”. Going even further than the conclusions of June 2014, the Decision says that references to ‘ever closer union’ are compatible with “different paths” of integration and:

“do not compel all Member States to aim for a common destination. The Treaties allow an evolution towards a deeper degree of integration among Member States that share such a vision of their common future, without this applying to other Member States”.³

What are we to make of this laissez-faire attitude? The changes proposed to the treaty are to be taken seriously not least because it is the reclamation of lost sovereignty that is at the core of the argument for Brexit. For the UK, therefore, it is clear that the Decision, if ratified, means ‘*never closer union*’. In contradiction to the Copenhagen criteria (1993), which assess a candidate’s eligibility to become a member of the European Union, the UK is no longer held to adhere to “the aims of political, economic and monetary union”. It is a sobering thought that were it now to apply to join the EU, the UK would be ineligible for membership (Article 49 TEU).

For the rest of the EU the Decision means the end of an implied common goal. Suddenly it has become acceptable, if not respectable, for states to hold different concepts of the *finalité politique*. The new normal, in short, is ‘*not ever closer union*’. Member states are no longer to enjoy equality under the treaties in their commitment to the European project.

Can the new European polity flourish without a common understanding of where it is headed? Ever-optimistic federalists, like Verhofstadt, believe that the relegation of the UK into what is in effect second-class membership of the European Union opens the way for the deeper integration of the core group of states, gathered in the eurozone. Whatever may be, however, there is no doubt that Cameron has missed a chance to craft a constructive new form of associate EU membership that might have suited his Conservative party rather well. Instead we have all blundered into something else whose long-term consequences cannot be foreseen. The European Union is left with its first concrete instance of political disintegration entrenched at a constitutional level.

The next convention will need to consider if the UK’s new ‘special status’, alongside all its old opt-outs, should be turned into a formal new category of membership short of full membership that might also be of use to third countries, such as Turkey. The convention will have to decide in particular what to do with ‘ever closer union’: it cannot be assumed that the revision as postulated in the 2016 Decision will

3. Thanks to the shifted order of paragraphs, however, such stuff does not have to be included in any eventual treaty amendment.

be welcomed without demur. Indeed, a constitutional convention may be expected to try to turn the tide against the new erosion of respect for EU law that is evinced by the Decision.

Meanwhile, the European court of justice in Luxembourg will keep its own counsel on the merits of the Decision and its possible effect on the constitutional order of the EU. Tusk boldly told the European parliament (24 February) that the court cannot strike down the intergovernmental Decision. Yet the court retains its constitutional duty to 'ensure that in the interpretation and application of the treaties the law is observed' (Article 19 TEU). Notwithstanding the assertions and protestations of the heads of government, the European court of justice will listen to what the European council has to say but it will certainly not be instructed by the European council as to how it should interpret such a cardinal provision of the treaties as 'ever closer union'. Behind the European court will be a number of national constitutional courts, not least the German Bundesverfassungsgericht, which will be anxious to uphold the integrity of EU law against the predations of here-today-gone-tomorrow politicians.

National parliaments waving cards

The other significant 'sovereignty' proposal advanced in the Decision is an attempt to increase the powers of national parliaments to object to a draft legislative proposal on the grounds of a breach of subsidiarity. Here too, there is something to worry about.

The Lisbon treaty installed a fairly complicated system of national parliamentary scrutiny of draft EU laws at the pre-legislative stage (Protocol 2). A 'yellow card' can be raised if one third of the 56 national parliamentary chambers (that is, 19) reach similar reasoned opinions against a draft law within an eight week period. This has only happened twice, and properly only once – against the establishment of the office of EU public prosecutor, an intervention which prompted a well-reasoned response by the commission justifying its measure. An 'orange card' can be waved if half of the chambers (29) object to a proposal – in which case, the council may, by a vote of 55 per cent of its members, simply reject the draft law. In the six years since Lisbon entered into force, the orange card has never been used.

The Brexit Decision nevertheless introduces a new and more complicated elaboration of the scrutiny procedure. It is proposed that a 'red card' will be waved if 55 per cent of national parliaments (31), acting within 12 weeks, object. Then this happens:

"Following such discussion, and while respecting the procedural requirements of the Treaties, the representatives of the Member States acting in their capacity as members of the Council will discontinue the consideration of the draft legislative act in question unless the draft is amended to accommodate the concerns expressed in the reasoned opinions."

The reference to "procedural requirements of the Treaties" must be read to mean that, in cases where the commission refuses to amend its proposal, the council has to act by unanimity in order to reject it (Article 298(9) TFEU).⁴

As government ministers are supposed to be directly accountable to their national parliaments for their behaviour in the council, it is inconceivable that 55 per cent of national parliaments could work themselves up into objecting to a draft law without their ministers (and, for that matter, the commission) realising that the game was up. One assumes that, in any case, the yellow and/or orange cards, with their lower thresholds, would have been deployed earlier (within eight weeks) to sound the alarm.

4. The Decision is silent on the whether the red card will apply to the scrutiny of EU treaties (Article 218 TFEU).

It is difficult to conclude otherwise than that the red card element of the Decision is a considerable nonsense. For one thing, the UK proposal shifts the inter-institutional balance in favour of those who are occupied with their national interests and away from those whose job it is to find and articulate the European general interest. This will not improve the quality or efficiency of law making. The obsession with waving cards from national capitals exaggerates the extent to which the principle of subsidiarity is under threat from the EU institutions. Furthermore, inflating the collective power of national parliaments to intervene in the EU's legislative processes ignores the very large differences between national parliaments in terms of mandates, powers and scrutiny capacity – as well as the obvious fact that few sovereign parliaments, not least Westminster, can readily agree to be bound by decisions of other parliaments.

National parliaments are represented directly by their government ministers sitting in the council, the second chamber of the EU legislature. The ability of national parliaments to warn and advise the EU institutions is safeguarded under the decision-making arrangements laid down in the Lisbon treaty. Tampering with that system, as the Decision does, grates against the treaty. Were there to be a legal conflict between the two, the European court of justice would undoubtedly plump for the application of the treaty-based rules against the informal supplementary procedure invented by the council. Tellingly, the Decision does not envisage a future treaty change in order to install the red card into Protocol 2: presumably it will only materialise in a change to the council's own rules of procedure.

It is significant that few prime ministers wish to tie themselves up in stricter mandates delivered by their national parliaments. The Scandinavian prime ministers are rather pitied for the constant attention they are obliged to pay to their national parliaments. David Cameron's failure to advance the concept of a 'green card' – whereby national parliaments could themselves initiate legislative proposals – was also noted: presumably the last thing he wants is yet more EU law making. Yet one wonders whether he has stopped to consider that it is legislation to deepen the single market, most loved by the UK, which tends to provoke most hostility from other national parliaments.

Economic governance

Less complicated than the sovereignty issues, and more practicable, are the provisions in the Decision concerning the relationship between the eurozone and non-euro states. Here the British got what they wanted, which was that, in the realm of banking union legislation, a single non-euro state could elevate a discussion in the council of ministers to the level of the European council and suspend the normal decision-making procedure. A decent price was paid for this concession, however. The Decision provides that the non-euro states will accept the further integration of the eurozone, and that no state will have a veto on any eurozone law – that is, qualified majority voting will in the end prevail at the level both of council of ministers and European council.

An agreement to clarify the relation between euro and non-euro states with respect to the single rule book for the banking sector, applicable across the European Union, was more difficult to reach. Mario Draghi, president of the European Central Bank, and the French government, in particular, were anxious to avoid giving Cameron special privileges for the City of London. The draft Decision spoke of there being "different provisions" for the two camps; the final Decision has merely "specific" provisions. That reduces the likelihood that there will develop a separate and

competing set of rules for banking surveillance and supervision, a division which would be certain to be exploited by the financial markets. The disadvantage of the compromise enshrined in the Decision is that it accentuates the division between the 'ins' and 'outs' of the euro and banking union when in reality every European bank is connected to both worlds. The more significant division in the banking world is between different types and sizes of banks, with varying degrees of solvency, all operating both in and out of the eurozone.

The Decision confirms – the George Osborne clause – that non-euro states will not contribute to euro bailout measures. Yet in another clause, it is established that the eurozone is not to stand still, and that the development of measures to strengthen macro-prudential oversight and to ensure the financial stability of the European Union is a dynamic process which the British will not obstruct. It was also agreed that the substance of the section on economic governance will be incorporated in the EU treaties at the next available opportunity. So while the British have achieved what they need for the purposes of the referendum campaign, the overall effect of the Decision in this area is to nudge forward the eurozone towards the full completion of the banking union and greater fiscal integration. It remains to be seen how UK centred financial institutions cope with the growing mutualisation of risk within the eurozone and the gradual tightening up of EU supervision over financial conduct.

The Decision is not controversial when it comes to competitiveness. Ironically, it is the more dynamic performance of Jean-Claude Juncker's commission on internal market matters that has rather blunted the impact of Cameron's crusade. The inclusion of a reference to the new, and good, Interinstitutional Agreement on Better Law Making in a declaration of the European council is apt.

Social benefits and free movement

As has been well rehearsed, the prime minister's efforts to restrict welfare benefits to EU citizens resident in the UK comes up against a number cardinal principles of the European Union: discrimination on the grounds of nationality (Article 18 TFEU); the right to move and reside freely across the European Union (Article 21 TFEU); and the free movement of workers (Article 45 TFEU). At the outset of the meeting on 18 February Cameron told his colleagues that he needed to be able to go home having blocked in-work benefits for a period of 13 years and having an agreement to index child benefit payments sent abroad. The Czech prime minister Bohuslav Sobotka, who chairs the informal Central European grouping of the Visegrad group (V4) – Hungary, Czech Republic, Poland and Slovakia – responded that any discriminatory scheme should last for a maximum of five years, should not start until 2020, must not apply to those already resident in the UK, must not be extended to pensions, and should only affect the UK (on the grounds that the UK alone had declined to deploy the seven-year transitional restrictions on immigration at the time of the EU's great enlargement of 2004).

In the event, the blocking period was agreed at seven years, and all states and not just the UK were enabled to exploit the same restrictions. In other respects V4 got their way – with the additional stipulation that EU workers should not be afforded less favourable treatment than third country nationals in a comparable situation, such as Turkish *gastarbeiter* (migrant labourers).

It was also agreed to widen the definition of the scope of limitations placed on the free movement of workers from "public policy, public security or public health" to include the reduction of unemployment. This loophole raises the alarming spectre of 'British jobs for British workers'. Another element of the Decision enlarges the criteria under which a state can simply forbid entry on the grounds of suspicion, without corroborating evidence, that a person is 'likely' – not 'actually' – to represent a genuine and serious threat to public security. In spite of several recent rulings of the European court of justice that have supported government restrictions against 'benefit tourism' and arranged marriages, the Decision enlarges the powers of the UK, and potentially other states, to

refuse entry to unwanted EU citizens and to treat them differently from nationals in comparable situations.

The transposition of these elements of the Decision into EU law, if the British vote to stay, will be a long and complicated process. The commission promises to bring forward amendments to Regulation 492/2011 on free movement and to Regulation 883/2004 on social security. It also promises a communication to clarify the application of the citizens' rights Directive 2004/38, and to consider its future amendment. All three measures will have to deal in detail with a myriad of different personal circumstances in which EU citizens find themselves in this age of mobility and complicated families.

An "alert and safeguard mechanism" is proposed for a member state to use when it comes under pressure from immigration "of exceptional magnitude over an extended period of time". It will be up to the commission to assess the situation and make a proposal to the council, acting by qualified majority vote (QMV), to restrict access to non-contributory in-work benefits for a period of four years from the commencement of employment. The restriction will be gradually phased out, and the authorisation will be annulled after seven years. The European parliament, under the ordinary legislative procedure, will have to agree to the precise criteria relevant to the use of the emergency brake (Article 291(2) TFEU). It is all the more astonishing, therefore, that the commission has already been inveigled upon (in a declaration annexed to the Decision), and in advance of agreement on the criteria, to declare that the UK "would be justified in triggering the mechanism in the full expectation of obtaining approval".

None of these new laws and measures will be uncontroversial in the European parliament: indeed, rather the contrary, splitting as they do not only federalists from nationalists but also left from right. The European court of justice is bound to be presented with cases brought against the UK, the EU or both on grounds of disproportionality and discrimination. There will certainly be those who argue that the Decision amounts to a re-nationalisation of social security in the internal market and an unwonted reversal of the progress made in developing the concept of EU citizenship.

It is unclear, moreover, whether the controversial new restrictions on welfare benefits will discourage EU citizens from moving to Britain. Surely the indexation of child benefits sent abroad will encourage more parents to bring their children with them to the UK, increasing pressure on British schools. And at the same time, the British government is raising the minimum wage further above that which prevails in central Europe, thereby increasing the pull factor.

The political price paid by the UK for these restrictions is heavy. Whereas Britain was once thought to be the close friend of central European states and a keen advocate of EU enlargement, its reputation is tarnished thereabouts. Can the UK still be taken seriously when it preaches the virtues of the single market at the same time as it jeopardises the underlying principle of free movement? And it is certainly ironic that the one country that complains endlessly about EU bureaucratic red tape has just contributed to its vast expansion. All in all, whatever constraints the Decision puts upon the UK's desire to discriminate against non-Brits, the inescapable fact is that there is to be discrimination where before there was none.

Facilitating coexistence

David Cameron has succeeded in persuading his colleagues in the European council of the case for a 'special status' for Britain. The Decision is formal and binds its signatories. The commission is complicit in its production and, if the British choose to remain in the EU on 23 June, in its implementation. The Decision does not, however, bind the European court of justice, the European parliament or the European Central Bank – all of which are set to play important roles in the transposition of the content

of the Decision into the primary and secondary law of the European Union.

The authors of the Decision make the bold claim that it constitutes a “new settlement” between the UK and the EU. At best, the Decision could contribute to a successful campaign backing a referendum decision to remain in the EU. The leavers are clearly wrong when they claim that the Decision is unimportant: it is a significant document with potentially long-term consequences for the future of Europe.

At worst, however, controversy surrounding the Decision will sow confusion in the referendum campaign and further aggravate Britain’s relations with the rest of the European Union. The threat of Brexit has already been a huge and costly distraction for the EU at a time when it has yet to resolve the eurozone crisis, when most of the mainland is grappling with the social, economic, political and physical consequences of the refugee crisis, when terrorism is on the rise, and when Russian irredentism threatens the post-cold war balance of power. And Britain has won no friends in refusing to engage with the EU’s current efforts to accommodate the refugees, many of whom flee westwards as a result of wars in Afghanistan, Iraq and Libya in which the UK was an early and notable combatant.

The rest of the EU was already alarmed at the ease with which the coalition government passed the EU Act 2011 that simply installed, presumably for ever, British referenda on all future constitutional steps taken by the European Union. It now wonders at David Cameron’s latest self-inflicted wound. He certainly appears to have been ill advised to embark on something as big as the renegotiation of the terms of British EU membership for the sake of something as small as the unity of his own political party. The self-evident disunity of the Tories on the completion of the renegotiation may be thought to highlight the futility of the whole in/out referendum adventure.

In the course of the renegotiation the prime minister has shown himself to be poorly informed about the EU and lacking any sense of European identity. He has been an unpredictable negotiator too. But his Decision is the decision. The British people have to take it or leave it. There is and there will be no other deal on offer. If the leavers win the referendum on 23 June, the hapless Ivan Rogers, UK permanent representative to the EU, will have to inform the secretary-general of the council on Monday 27 June that Britain is off. The secession clock will then start ticking – and the UK will have two years to negotiate the withdrawal agreement in an orderly way, or face a disorderly expulsion at the end of June 2018.

Although the details of the Decision may not feature prominently in the British referendum campaign that does not mean that it can be discarded by the rest of the EU. The section on economic governance, which is the best part of the Decision, talks at one point of how the EU institutions, together with the member states, will “facilitate the coexistence between different perspectives”. By contrast, the section on sovereignty, which is the worst part of the Decision, says that member states can go their own way. Let us hope that the political effect of the Decision is precisely that it facilitates coexistence between the UK and its EU partners even as they diverge from the common path.

Whatever the outcome of the referendum, a general revision of the EU treaties cannot now be far away. The Brexit experience, and the risk of contagion to other more peripheral states, should encourage the rest of the European Union to press ahead with the next stage of European integration made manifest in genuine fiscal and political union.

Who knows, the arrival of the “special status” that the British seem to yearn for may even kindle the fire for those Europeans – including those in Britain – who yet pursue the goal of uniting Europe’s peoples ever closer.