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# **Euro ins and Euro outs: The UK Renegotiation Agreement**



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## Introduction

On the 19th February 2016, the European Council agreed on the future position of the UK in the EU, including arrangements to ensure that eurozone countries, now with a qualified majority in the Council, could not combine to outvote non-eurozone countries on non-euro matters, such as the Single Market. Although there is no evidence that eurozone countries have abused or plan to abuse their majority in this way, the UK and other non-eurozone countries have been concerned about the possibility. The renegotiation provided an opportunity to prevent such a situation from arising.

The agreement also addresses the financing of support mechanisms for the euro, reinforcing previous agreements that non-eurozone countries cannot be required to bailout the Eurozone.

This briefing analyses the parts of the renegotiation agreement relating to the euro, including protection for Single Market legislation, arrangements for future Eurozone bailouts and a safeguard mechanism that the UK government can trigger if it feels the agreement is about to be breached.

## The euro parts of the renegotiation agreement

There are two parts of the agreement relating to the euro issue:

- Section A ("economic governance") of the Decision of the Heads of State & Government Concerning a New Settlement for the United Kingdom within the European Union;
- A draft Decision of the Council of Ministers concerning banking union and further euro area integration to safeguard the position of Member States not in the euro which the Member States have undertaken to adopt.<sup>1</sup>

Each of these is considered below.

### Section A of the Decision of the Heads of State & Government

The main points of this part of the agreement are:

- First, that UK businesses trading in the Single Market cannot be discriminated against because the UK is not in the euro;

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<sup>1</sup> The text of the agreement was published as Annex I to the Conclusions of the European Council of 18/19 February 2016: see European Council, *European Council meeting (18 and 19 February 2016) – Conclusions*, ST 1 2016 INIT, 19 February 2016

- Secondly, that responsibility for supervising the financial stability of the UK remains in the hands of the Bank of England and the other UK financial authorities;
- Thirdly, that British taxpayers will never be required to pay for Eurozone bail outs; and
- Fourthly, that 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 issue of **discrimination** arises because of the concern referred to above that the Eurozone has a qualified majority in the Council of Ministers and could use that to pass measures.

In their Decision, the Member States agreed that discrimination against any business or person because of the currency where they are established is prohibited. "Any difference of treatment", it goes on today "must be based on objective reasons".

In the second part of this section the Decision also says explicitly that:

Legal acts, including intergovernmental agreements between Member States, directly linked to the functioning of the euro area shall respect the internal market, as well as economic and social and territorial cohesion, and shall not constitute a barrier to or discrimination in trade between Member States.<sup>2</sup>

This protects the UK (and other non-euro Member States) from attempts by euro countries to legislate against the interests of the non-euro Member States. The importance of this point was demonstrated by the decision of the European Central Bank that clearing houses dealing with large volumes of euro transactions should be located inside the eurozone. This amounted to discrimination against UK-based clearing houses, which resulted in a successful challenge to the measure in the European Court of Justice. Without this judgment, the UK clearing houses would have been forced to relocate their euro business into the eurozone, threatening many jobs in London.<sup>3</sup>

The Decision then turns to the **rules for the operation of the eurozone**, including those relating to banking and financial services. Here it makes explicit that banking union and other regulatory measures applying to eurozone institutions only apply to them and not to non-eurozone Member States (unless they have chosen to opt into those measures). This makes it absolutely clear that the UK authorities (including the Bank of England) remain responsible for the stability and regulation of our financial system.<sup>4</sup> This does not prevent the eurozone taking necessary measures to protect its financial stability but such measures must not discriminate against non-eurozone Member States.

The third element of the decision relates to **eurozone bailouts**. As a result of the fiscal difficulties of some eurozone countries, bailout mechanisms have been established to provide those countries with loans to enable them to restore stability both to their financial systems and to their public expenditure budgets. The Decision states that non-eurozone

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<sup>2</sup> European Council, *supra* n. 1, p. 13, para 1

<sup>3</sup> Described in HM Government, *The best of both worlds: the United Kingdom's special status in a reformed European Union*, 29 February 2016, p. 16, para 2.19

<sup>4</sup> European Council, *op. cit.*, p. 3, para 2

countries cannot be made to finance such bailout mechanisms. This gives legal force to the understanding reached in summer 2015 that the UK would not be responsible for financing any part of the bailout given to Greece and ensures that it cannot be required to contribute to any such bailout in future.<sup>5</sup>

The final element in the Decision concerning the euro relates to the **relationship between the Council of Ministers and the Euro Group**. The meeting of the finance ministers of the eurozone, the Euro Group, which invariably occurs monthly in advance of meetings of the Economic & Finance Council, has grown in importance as the eurozone has expanded and because of the recent euro crisis. The Decision reiterates the legal position, that the all Member States, whether they are in the euro or not, have a right to participate in Council discussions, whether or not they have a vote on the business under discussion. It also states that informal discussions between Member States must respect the “powers of the Council, as well as the prerogative of the other EU institutions”.

This provision is designed to prevent the Euro Group from becoming a substitute body for the Council of Ministers for eurozone matters. It must be right that eurozone Ministers have a forum to discuss issues related to the common currency but it must not be a forum for caucusing against the interests of non-euro Member States.<sup>6</sup>

#### The Council of Ministers Decision

Annex II of the renegotiation agreement includes a draft Council Decision, to which the Member States have given their agreement. The purpose of this Council Decision is to provide a safeguard mechanism by which a non-eurozone Member State can raise concerns about a proposed measure before the Council which they believe violates the principles set out in Section A, *i.e.* the issues discussed above.

The draft decision is based on a previous arrangement called the Ioannina Compromise, which provides for Member States in a minority in the Council to interrupt the legislative process to trigger efforts to try and reach a satisfactory agreement to all parties.<sup>7</sup> The new Council Decision applies a similar approach so that one or more Member States not participating in banking union could raise an issue with legislation that in their view violates the principles in Section A of the Heads of State & Government's Decision.

#### **Legal status of the agreement**

The Decision of the Heads of State & Government is a binding international agreement and has been deposited at the United Nations. Like previous such agreements reached at the European Council to deal with the concerns of Denmark about the Maastricht Treaty in 1992 or the Irish Government to deal with its issues relating to the Lisbon Treaty in 2009, this Decision of the Heads of State does not amend the Treaties of the EU but is a separate agreement which (in the words of Sir Alan Dashwood QC) is “a text concerning the interpretation and application of the

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<sup>5</sup> European Council, *supra* n. 1, p. 14, para 3

<sup>6</sup> *Ibid.*, p. 14, para 5

<sup>7</sup> Described by Sir Alan Dashwood QC, former Director in the Legal Service of the Council of Ministers and Professor of European Law at the University of Cambridge, and member of the Senior European Experts group, in A “*Legally Binding and Irreversible*” Agreement on the Reform of the EU, Henderson Chambers, 20 February 2016, p. 6

EU Treaties".<sup>8</sup> The Decision also includes an agreement by the signatories that the EU Treaties will be amended in future to incorporate the matters it contains.<sup>9</sup>

In the case of the Council Decision, agreement to that forms part of the Decision adopted by the Heads of State & Government and would be adopted by the Council on the same day as the Decision of the Heads of State & Government, *i.e.* after the UK had voted to remain in the EU. As the Council Decision is one regulating the Council's own conduct, it can be adopted without being proposed by the European Commission or approved by the European Parliament.<sup>10</sup>

Should any Member State wish to amend the Decision of the Heads of State & Government, then they would need the UK's agreement to do so. This is made clear in the advice provided by the Legal Secretariat to the Council before agreement was reached.<sup>11</sup>

## **Conclusion**

In the longer-term, the parts of the UK's renegotiation agreement relating to the relationship between the Member States in the euro and those outside may well prove to be the most important. The danger of the eurozone states caucusing in a way that damages the interests of non-eurozone countries such as the UK is theoretical – there are often divisions between eurozone Member States on Single Market issues for example – but the possibility was there and it was important to get it addressed. The legally binding nature of the agreement, and the commitment from the all 28 Member States that it will be incorporated in a future EU treaty, is an important safeguard and a worthwhile achievement of the renegotiation.

**March 2016**

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<sup>8</sup> Sir Alan Dashwood QC, *supra* n. 7, p. 3

<sup>9</sup> The latter is contained in European Council, *supra* n. 1, p. 15, para 7

<sup>10</sup> Adopted under *Consolidated Version of the Treaty on the Functioning of the European Union*, art. 240, 2012 OJ C 326/47, p. 154

<sup>11</sup> See European Council, *Opinion of the Legal Counsel: Draft 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 (doc. EUCO 4/16) – Form, legal nature, legal effects and conformity with the EU Treaties*, ST 15 2016 INIT, 8 February 2016



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