

This is a man with a plan, but is it legally binding?

When a politician says that he wishes to make something 'absolutely clear' you can rest assured that there is something in his subsequent statement that is of an ambiguous nature or worse still something which is at complete variance with what he is stating.

Well, last week David Cameron stood up in a hushed House of Commons and uttered those hallowed words , "Let me be absolutely clear about the legal status of these changes that are on offer ...these changes will be binding in international law and will be deposited at the UN ...in key areas treaty change is envisaged..."

The changes which were apparently 'on offer' were those which had been hatched between Cameron and Donald Tusk, on a number of topics which the Prime Minister and he had decided should be laid before the British public as proof that EU and Britain had reached a civilised accommodation of each other's hopes and aspirations for new beginning.

To be fair to Cameron, he did use the future tense when stating that these changes would be legally binding but he totally failed to lay out the procedure whereby they would become binding and which particular key areas would need treaty change .The clear implication being that some would not need anything other than a quick agreement by some higher authority.

Tusk in his letter had written that "most of the substance of the proposal takes the form of a legally binding decision of the Heads of State or Government," i.e. the European Council.

The House had of course been given sight of the Tusk letter and knew in advance what it said so it perhaps surprising that

no one cross examined Cameron on the precise detail of the next steps in the saga.

Dominic Grieve added to the discussion by saying that the House should be aware of the “legally binding nature of the document that he (Cameron) will bring back if it is accepted by the European Council”

No ifs and buts there then, says Mr Grieve. Once it is agreed by the European Council it is law!

The only problem is that the European Council (Heads of State *et al*) is not part of the legislative body so it can't make laws so whatever Cameron brings back will be just a statement of intent, no more no less.

On the other side of the coin, some realism has been introduced by our old friend Martin Schulz who has warned of the fact that the MEPs will need to agree to the proposed changes otherwise there could be “roadblocks “to these changes. The fact is that they can stop them.

So there we have it. On the face of it we now have complete confusion over what we, the general public, have been led to believe by the different parties to this discussion.

Are we looking at a quick legal settlement via an agreement of the European Council (which we know they are not entitled to do) or the more convoluted process whereby we have the prospect of treaty change via the normal processes which involve a meetings, conventions and conferences a vote by the EU Parliament? All of this will take time.

There is also the possibility of the use of the simplified procedure which is available under Article 48 TEU for revising treaties. If the European Council is seized of the matter and considers the proposed changes to the treaties to be of a minor nature (well frankly whatever Cameron says, this is all they are) and they are in agreement with those changes they

can consult with the Commission, the EU Parliament and then move on to the ratification process will have to be unanimous.

That is what I suspect may happen and nothing will be set in stone until the proper legal processes are complete. They are unlikely to be completed if we have a referendum in June and therefore the British public may be asked to consider its vote in the absence of any legally enforceable changes to our terms of membership in spite of all the hot air in Parliament.