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Voters must know EU changes will require Treaty amendment



15 December 2015

MPs warn that UK voters in the EU referendum must be aware that legally binding and irreversible change to the EU requires Treaty amendment.

- [Report: UK Government's renegotiation of EU membership: Parliamentary Sovereignty and Scrutiny](#)
- [Report: UK Government's renegotiation of EU membership: Parliamentary Sovereignty and Scrutiny \(PDF 738KB\)](#)
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Conclusions

The European Scrutiny Committee concludes that the "binding and irreversible" reform of the European Union sought by the Prime Minister would require Treaty amendment, either directly or through a protocol, in its Report, published today, on assessment of the Government's negotiating position at the European Council. Such treaty changes cannot be delivered before any referendum.

The Committee warns that a key measure of the success of the Government's negotiation will be whether political commitments can be made secure and considers the extent to which promises or guarantees of change would be robust and meaningful. It notes that the Government envisages immediate delivery of some of the negotiation outcomes through international agreement, but warns that such agreements are restricted to supplementing or interpreting existing EU treaties; they cannot substantively alter them.

Safeguards

The Committee notes that "it is politically and legally right that the Government negotiate to adopt safeguards against the risk that Eurozone member states could caucus together against the interests of the European Union as a whole." It notes there are no certainties about how the Eurozone will integrate further. The Committee considers the regulation of the relationship between Eurozone and non-Eurozone Member States is of such importance it requires the security of Treaty amendment.

Timing

The report comes two days before the Prime Minister's proposals for change (set out in his letter to Donald Tusk of 10 November) are due to be considered at the European Council (17 December.)

By the end of 2017 the UK electorate will be invited to decide whether the UK should remain a member of the EU or leave it. The Government is renegotiating the terms of the U.K.'s EU membership before the electorate is invited to make its choice.

However, the Committee considers that the Government's approach to allowing Parliamentary debate during the renegotiation has been "reactive and opaque".

The Committee's Report sets out

- the Government's engagement with Parliament and others;
- the extent to which a legally binding and irreversible change can be brought about without Treaty change;
- the legal significance of the concept of "ever closer union";
- the relationship between Eurozone and non-Eurozone countries;
- the reforms to competitiveness sought by the Prime Minister;
- and the measures proposed to reduce net migration.

Ever closer union

The Committee disagrees with the Government that "ever closer union" is legally significant, drawing on expert evidence which also indicated the concept is largely symbolic and that UK disengagement would fall short of the fundamental change in the existing relationship of the UK to the EU to which the Prime Minister aspires. UK disengagement would not, strictly, apply retrospectively to the existing EU *acquis* of Treaties and legislation.

The Committee considers that it is most likely that agreement will be reached on competitiveness, and notes that the European Commission has long been concerned with competitiveness, and the Government's priorities are closely aligned with the existing work programme of the current Commission. In these circumstances, the Committee notes that change could not be considered as a fundamental change in the U.K.'s relationship with the EU.

The Committee notes that it will be politically challenging to negotiate changes to the rules on migration, and that it is not clear whether or not such changes would require Treaty amendment. The Committee considers "uncertainty may remain in some areas due to the deep involvement of the Court of Justice. That in itself suggests the need for Treaty amendment in order to make the outcome of the renegotiation "judge-proof"."

Chair's comments

The Chairman of the Committee, Sir Bill Cash, said:

"Our Report is clear that the only way in which the Prime Minister's negotiations could be given the legally binding and irreversible effect which he himself has called for—even for minor reforms to the EU, let alone a fundamental change in the UK's relationship with the EU—would be through Treaty amendment, or the equivalent agreement of a Protocol. These would be lengthy processes, and each Member State would have to agree using its own constitutional procedures including, in some countries, referendums. Whatever the promises made in the negotiations, there is no certainty that they will be delivered to the British people. Voters in the forthcoming referendum must be aware of this when they make their choice as to whether to vote to remain in the EU or to leave the EU."

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