

I Want a Referendum Briefing Note

European Scrutiny Committee report:

Independent MPs conclude new treaty is “substantially equivalent to the Constitutional Treaty”

The cross-party European Scrutiny Committee has today published a report which will have a major impact in the debate about whether there should be a referendum on the revived Constitutional Treaty.

The report finds that the new Reform Treaty is “substantially equivalent to the Constitutional Treaty”, including for the UK.

It also notes that the Government’s “red lines” are the substantially same as before, and questions whether the various safeguards for the UK will work.

It notes that the Treaty would “change the legal relationship between the EU and national Governments” – particularly by giving the European Court of Justice new powers over criminal law and policing.

I Want a Referendum Chairman Derek Scott said:

“This report blows a huge hole in the case against a referendum. A completely independent group of MPs has looked at the facts and concluded that the new treaty is just the same as the old Constitution. Gordon Brown must now keep his promise and hold a referendum.”

I Want a Referendum advisory group member Kate Hoey MP said:

“This is a devastating, forensic report. Anyone who now tries to pretend that this is substantially different to the rejected EU Constitution, or that the UK has signed a different treaty is going to get nowhere. The Prime Minister must not try and back out of the referendum he promised us.”

Key points from the report

1) The new treaty is the same as the rejected EU Constitution

From Para 45:

- “Taken as a whole, the Reform Treaty produces a general framework which is substantially equivalent to the Constitutional Treaty.”

- “Even with the ‘opt-in’ provisions on police and judicial cooperation in criminal matters, and the Protocol on the Charter, we are not convinced that the same conclusion does not apply to the position of the UK under the Reform Treaty. We look to the Government to make it clear where the changes they have sought and gained at the IGC alter this conclusion in relation to the UK.”

The Government has repeatedly insisted that “the constitutional concept has been abandoned – most recently in the Prime Minister’s press conference today. But the Committee’s Report notes that this is “misleading”.

- Para 50: “we do not consider that references to abandoning a ‘constitutional concept’ or ‘constitutional characteristics’ are helpful and consider that they are even likely to be misleading in so far as they might suggest the Reform Treaty is of lesser significance than the Constitutional Treaty. We believe that the Government must offer evidence if it is to assert that the processes are significantly different.”

2) The red lines won’t work

The report also publishes correspondence with ministers. Initially the Government claimed that it had secured an “opt out” from the Charter of Fundamental Rights. In his statement on 25 June Tony Blair said, “It is absolutely clear that we have an opt-out from both the charter and judicial and home affairs.” However, in a letter dated 31 July Europe Minister Jim Murphy admitted:

- “The UK specific protocol which the UK secured is not an ‘opt-out’ from the Charter. Rather, the protocol clarifies the effect that the Charter will have in the UK.”

The Committee warns that the European Court of Justice will simply sidestep attempts to limit the impact of the Charter. The report gives a number of examples:

- Para 58: “To take a possible example, the Working Time Directive contains provisions limiting the weekly hours of work of a worker to 48 hours per week, but with the possibility of agreements to waive those limits. As Article II-91 of the Charter provides that “every worker has the right to limitation of maximum working hours” we have some concern that following a

reference to the ECJ from some member state, the Court might find that, in the light of the Charter, the [UK] derogation from the Directive allowing such waivers has to be interpreted more restrictively than before (i.e. before the Charter had legal effect).”

- Para 59: “We would be concerned that, following a reference to the ECJ from some other member states the Court might find that a measure adopted at EU level (such as Council Directive 200/43/EC) had to be given an extended interpretation in light of the wide grounds for prohibiting discrimination under the Charter.”

On criminal justice and policing the report notes that:

- Para 21: “We are concerned that removing the “distinction” between the EU and the EC in relation to matters currently dealt with under the third pillar (with the subsequent increase in the powers of the Commission to bring infraction proceedings and those of the ECJ to interpret and apply Union measures) will change the legal relationship between the EU and national Governments in a way that will increase their powers in relation to UK law. We call on the Government to set out the safeguards which they will expect to gain at the IGC to prevent this happening.”

On future treaty change the report notes that the new “simplified revision procedure”, - which would allow the treaties to be incrementally changed in future with no need for any further treaties - would lead to even less transparency and accountability in the way the EU is run:

- Para 42: “We are concerned that these provisions could allow substantial changes to be made without convening an IGC and so lead to even less transparency in the way the EU is governed, and less accountability of governments to their national parliaments. We ask the Government to outline what safeguards they would put in place to prevent this further erosion of transparency and accountability.”

Notes for Editors

1. The Report of the European Scrutiny Committee is embargoed until 00:00 Tuesday.
2. For more information please contact Neil O’Brien on 0207 197 2333.

3. IWR is a cross-party campaign for a referendum on the revived Constitutional Treaty. The IWR advisory group includes: Derek Scott (chair); Graham Stringer MP; Gisela Stuart MP; Mike Hancock MP; Frank Field MP; Kate Hoey MP; Michael Gove MP; David Heathcoat Amory MP; Greg Hands MP; and Nick Herbert MP.