



Renegotiation of EU Treaties – background briefing

EU control?

The EU does not have exclusive “control” over the UK’s asylum and immigration policy, nor over social policy covering welfare and trade unions. The EU only has exclusive competence for the following policy areas: customs union; competition rules relating to the Single Market; the conservation of marine biological resources under the Common Fisheries Policy; external trade e.g. WTO negotiations. In these fields, the British government negotiates agreed policies with the other EU member states.

In other areas, particularly social policy, the EU has a role in setting basic standards for health and safety and employment rights. The UK still retains complete control over immigration quotas and border controls, and has the right to opt-out of future EU legislation in this area.

Renegotiation in practice

◆ For the UK to unilaterally withdraw from an EU policy area, all other 24 EU member states would need to agree to the UK opting out, and legal amendment to the existing EU treaties would need to be made. Such a scenario is extremely unlikely.

◆ If the UK Government, without this consensus or Treaty amendment, then withdrew unilaterally from a particular EU policy it would be acting in contravention of the 1972 European Communities Act, the legal basis for the application of EU law in this country. As long as that Act remains in its present form, the British courts are legally bound to enforce EU law. The British Government would know that, if the UK went ahead and withdrew from an EU policy unilaterally, our courts would have no option but to declare this illegal under the 1972 Act. So the Government would have the choice between seeking some face-saving “compromise” with our EU partners or repealing all or part of the 1972 Act. The latter, in effect, would be sounding the start gun for withdrawal from the EU.

A “pick and choose” EU in operation

◆ If we could pick and choose which EU laws we obey, why shouldn’t any other EU country? How could the EU work if any member state withdraws from any area of policy it had come to dislike?

◆ Would advocates of renegotiation be happy for other member states to opt-out of EU public health policy on, for example, Avian bird-flu? Would 25 differing systems of protection be beneficial to countering the threat of a pandemic? Would it be beneficial if some EU countries, having opted out of public health policy, were currently ignoring the import ban on poultry from Romania, Russia and Turkey (where the deadly H5N1 strain has been detected)?

◆ Would advocates similarly be happy to see, for example, Italy not applying EU law relating to cross-border terrorism? If Italy had decided not to sign up to the European Arrest Warrant, the 21 July London bomb suspect Osman Hussain would still be in Rome, rather than back in Britain facing trial.

◆ If France opted out of EU public health law, all British beef would still be banned in that country, a disaster for our farmers. It took too long, but France eventually, like every other EU state, had to bow to EU law and accept the import of British beef (from cattle under 30 months old) or face paying huge fines. After a recent EU ruling, every member state must now also accept British beef over 30 months old, and any country refusing to do so would face sanctions similar to those imposed on France.

NB British beef is still banned in over 80 countries throughout the world, including the US.

◆ The 2002 case of the Sangatte refugee camp illustrates why a “pull up the drawbridge” approach of non-cooperation with our EU partners on immigration and asylum does not work. The lack of common EU rules meant that the issue dragged on until bilateral agreement could be found with France. Negotiating this agreement was time-consuming, costly and prolonged the problem greatly.

◆ Under current EU rules, responsibility for examining an asylum application lies with the member state the individual first arrives in. This reduces “asylum shopping”, which, as the UK is not the first port of call for the majority of asylum seekers arriving in the EU, is in our interests.

◆ Eurodac, an EU-wide fingerprint database of asylum seekers, has also been established to support this system. It has been used by the UK to return hundreds of asylum applicants to their original entry point within the EU. Is this the type of policy that would be renegotiated?

Voices on renegotiation

“There are those calling for the Tory Party to demand the renegotiation of Britain's membership of the European Union; a call which is little more than a euphemism for us to quit Europe”

Malcolm Rifkind, Tory Reform Group dinner, Conservative Party conference, Blackpool, 6 October 1999.

“We are in the European Union, we are going to stay in it and the belief that you can renegotiate is absurd, mad.”

Sir John Major, Interview to Daily Telegraph, 13 October 1999

“Renegotiation would damage Britain’s reputation without improving her terms of membership or advancing her national interest; it is a false prospectus.”
Renegotiation: A false prospectus’; Conservative group in the European Parliament, March, 1997

“The whole policy of renegotiation is, as far as the Tories are concerned, nothing more than self-delusion – and on the British public it’s just a deception.”
Nigel Farage, UKIP, E!Sharp magazine, January 2005

“(Renegotiation) is a sort of virtual reality. Why should our partners in the EU let us simply jack out of anything we don’t like but let us stay in for the ride where we think it suits us?”
Chris Patten, The Independent, 29 October 2004

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