

HOUSE OF LORDS

European Union Committee

3rd Report of Session 2015–16

**The referendum on
UK membership of
the EU: assessing the
reform process**

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The European Union Committee

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Evidence is published online at www.parliament.uk/eu-referendum-reform-process and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in the 30 June 2015 oral evidence session with Rt Hon David Lidington MP, Minister for Europe.

SUMMARY

The UK Government has announced its intention to hold a referendum on UK membership of the EU by the end of 2017. This short report analyses the reform process that will now take place.

The Government is right to press for a referendum as soon as possible in order to minimise uncertainty. Yet it must bear in mind the potential for delay and disruption in what will inevitably be a contentious process. The Government must also be mindful of the potential impact on the UK Presidency of the Council of the European Union in the second half of 2017. It would be highly undesirable to hold the referendum during the Presidency, and the Government must be ready to take contingency action if required.

There is uncertainty over the specific roles to be played by key UK negotiators including the Prime Minister, the Foreign Secretary and the Chancellor of the Exchequer, as well as over how the internal Whitehall coordination process will work. The Government needs to explain not only how the negotiating process will operate from the UK point of view, but also how it will engage with key interlocutors in the EU institutions.

The Prime Minister has made welcome efforts to engage with the Heads of Government of all 27 other Member States. We urge the Government to maintain these efforts in the months ahead, ensuring that the concerns of all Member States are taken into account, regardless of size or perceived influence.

Parliament must not be presented with a *fait accompli* at the end of the process. We therefore welcome the Government's commitment to keep Parliament informed during the reform negotiations. The Government must also ensure that other key stakeholders are kept informed, in particular the devolved institutions.

While it is not feasible for changes to the EU Treaties to come into force ahead of a referendum, the Government is right to seek to ensure that key aspects of an agreement on a reform deal are legally binding. This is easier said than done. The Government must clarify as soon as possible the precise means by which any agreement will be made binding.

While we welcome the Government's desire to enhance the role of national parliaments, we are concerned that its proposals for a 'Red Card' could be counterproductive if pursued in isolation. The Government should explore means, such as our own proposal for a 'Green Card', by which national parliaments could make a positive, proactive contribution to the development of EU policies and legislation.

This is the first of a series of reports on the referendum process; we will set out our views on the Government's reform priorities in the coming months.

The referendum on UK membership of the EU: assessing the reform process

CHAPTER 1: INTRODUCTION

The referendum on UK membership of the EU

1. On 23 January 2013, the Prime Minister, Rt Hon David Cameron MP, made a long-anticipated speech on the future of the European Union.¹ In that speech, now known as the ‘Bloomberg Speech’, the Prime Minister announced his intention, if re-elected, to negotiate a “new settlement” for the EU, followed by an in/out referendum on UK membership of the EU.
2. The 2015 Conservative Party General Election Manifesto restated this commitment:

“It will be a fundamental principle of a future Conservative Government that membership of the European Union depends on the consent of the British people—and in recent years that consent has worn wafer-thin. That’s why, after the election, we will negotiate a new settlement for Britain in Europe, and then ask the British people whether they want to stay in the EU on this reformed basis or leave ... We will hold that in-out referendum before the end of 2017 and respect the outcome.”²
3. The return of a Conservative majority Government at the 7 May 2015 General Election means that this commitment is now being implemented. The first Queen’s Speech of the new Parliament stated that:

“My Government will renegotiate the United Kingdom’s relationship with the European Union and pursue reform of the European Union for the benefit of all Member States. Alongside this, early legislation will be introduced to provide for an in/out referendum on membership of the European Union before the end of 2017.”³
4. At the 25–26 June 2015 European Council, the Prime Minister set out in outline his proposals for EU reform, and for a referendum on UK membership. The Council agreed to revert to discussions on the subject in December 2015.⁴

¹ Speech by the Prime Minister on EU at Bloomberg, 23 January 2013: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg> [accessed 14 July 2015]

² Conservative Party, *Strong Leadership, a clear economic plan, a brighter, more secure future: The Conservative Party manifesto 2015*: <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf> [accessed 14 July 2015]

³ HL Deb, 27 May 2015, [col 6](#)

⁴ European Council conclusions, 25–26 June 2015: <http://www.consilium.europa.eu/en/press/press-releases/2015/06/26-euco-conclusions> [accessed 14 July 2015]

This report

5. This report marks the European Union Committee's first formal response to these developments. It takes account of an oral evidence session held on 30 June 2015 with the Minister for Europe, Rt Hon David Lidington MP. It is also informed by our discussions, during a visit to Brussels on 1–2 July 2015, with representatives of the EU institutions, including the President of the European Parliament, Martin Schulz MEP; by meetings in London with Ambassadors to the UK of various EU Member States; and by discussions with other interlocutors including colleagues from the European Parliament and other national parliaments.
6. Given the range of views within the House and across the country that will be expressed in the referendum campaign itself, this report does not recommend whether or not the UK should remain a member of the EU. Nor, although we have borne it in mind in our deliberations, do we address the European Union Referendum Bill, introduced to the House of Commons on 28 May 2015. It is not part of our remit to scrutinise domestic UK legislation.
7. Rather, this report is designed to inform members of the House, and the wider political audience in the UK and the EU as a whole, of our views and concerns at this early stage in the renegotiation process. It sets out our assessment of the mechanics of the process. It also sets out our intended approach as negotiations continue. Although Chapter 3 of the report touches on the policy issues pertaining to the renegotiation, it is not intended to express the Committee's considered view on these issues. The Select Committee, together with its six Sub-Committees, is likely to analyse the proposed reforms in greater detail in the coming months.
8. In the meantime, we trust that this report will provide a means for the House to discuss the issues that we raise in depth, and in that spirit **we make the report to the House for debate.**

CHAPTER 2: THE REFORM PROCESS

The timetable

9. The UK Government has made a firm commitment to hold a referendum before the end of 2017. Beyond this, the timetable for the reform negotiations remains uncertain. There are, however, some indicators. In his evidence before us, the Minister for Europe, Rt Hon David Lidington MP, stated that technical discussions were being taken forward by the Council secretariat (which we understand started on 2 July 2015), and that political discussions would then follow.⁵ The European Council President, Donald Tusk, is expected to present an update at the October European Council, though further substantive discussions at Council are not expected until December 2015. The Minister was unable to say at this stage whether a final agreement or an interim report would be discussed in December.⁶
10. The Minister said that late 2015 and 2016 was an opportune time for discussions, ahead of the French Presidential and German Federal elections, both scheduled for 2017. He did not rule out discussions concluding “much, much earlier than that.” Yet the timetable for a negotiation involving 28 Member States was inevitably subject to uncertainty. While the Government’s preference was for an early deal, the Prime Minister had been clear that he would not sacrifice substance for the sake of speed.⁷
11. In terms of the formal referendum period, the Minister cited the requirement set out in the Political Parties, Elections and Referendums Act 2000 for a minimum 10 week formal referendum period. However, the Government regarded a 16 week period as best practice. He also stressed that the Government would wish to hold a referendum at an appropriate time of year.⁸
12. **It appears likely that the Government’s preferred course is for discussions on reform to be completed as early in 2016 as possible, with a referendum following by the autumn of 2016 at the latest. Yet the Government is understandably nervous about committing itself to such a timetable given the potential for delay or disruption. We support the Government’s efforts to ensure that the referendum takes place as soon as possible, in order to minimise uncertainty for citizens, financial markets, businesses and other stakeholders in the UK and across the EU.**

The 2017 UK Presidency of the Council of the European Union

13. The timetable is further complicated by the fact that the UK is scheduled to hold the rotating Presidency of the Council of the European Union in the second half of 2017. When we asked the Minister about the implications of the referendum for the Presidency, he told us that it was important to push forward with plans for the Presidency—indeed, planning had already started and would “continue in the normal way”. Although he acknowledged that it would not be ideal to hold a referendum during the Presidency, it was not

⁵ [Q 10](#)

⁶ [Q 11](#)

⁷ *Ibid.*

⁸ *Ibid.*

impossible, as was shown by the staging of a significant referendum in Denmark during one of its previous Presidencies.⁹

14. The Minister added that Section 125 of the Political Parties, Elections and Referendums Act 2000 would make it “very difficult, if not impossible, for us to undertake a whole range of routine EU business in the four weeks leading up to the referendum date”, including public statements about Presidency priorities and responding to significant events. It was for that reason that the Government sought within the European Union Referendum Bill to disapply Section 125. He acknowledged that this had been a contentious issue during debate in the House of Commons, and the Government was seeking to respond to the concerns that had been raised.¹⁰
15. **The UK Presidency of the Council scheduled for the second half of 2017 makes the arguments for an earlier referendum all the stronger. To stage a referendum on the UK’s membership of the EU while it holds the Presidency would not only be highly undesirable, but also so difficult as to be practically impossible. It would be an insuperable distraction from any Presidency policy priorities that the UK sought to set out.**
16. **On the other hand, an earlier referendum would create the possibility that the UK may have voted to leave the EU before its Presidency takes place. This would make a UK Presidency in 2017 politically untenable.**
17. **On balance, we believe that the Government is at this stage right to press ahead with its plans for the Presidency in 2017. If, however, it were to become clear in coming months that the pace of negotiations is likely to prevent a referendum being held before the end of 2016, we recommend that the Government should explore alternatives, which could involve requesting one of the succeeding Presidencies to move forward to the second half of 2017.**

The Whitehall process

18. One of the haziest aspects of the renegotiation is the nature of the internal Whitehall structure for handling the renegotiation. It is our understanding that, aside from the Prime Minister, both the Chancellor of the Exchequer and the Foreign Secretary will play significant roles in the process. In addition, the Minister for Europe will be undertaking much of the day-to-day activity. Therefore, at least four senior ministers from three Government departments (the Foreign and Commonwealth Office, HM Treasury and Number 10/ Cabinet Office) will play an integral role in the process.
19. We asked the Minister for Europe to explain the Whitehall process. He told us that the Prime Minister was leading the renegotiation process, and since the election he had “devoted an enormous amount of his time talking to his counterparts in the European Council and to consideration of our approach here.” The Minister confirmed that the Chancellor and the Foreign Secretary were working closely with the Prime Minister, and that he himself was “actively involved in supporting that process”. Still other ministers would be

⁹ [Q 13](#)

¹⁰ *Ibid.*

involved where proposed reforms touched upon their responsibilities.¹¹ The Minister also cited the role played by the newly established Cabinet Committee on Europe, whose terms of reference are to “consider issues related to the EU referendum”. Aside from those ministers already mentioned, the Committee’s membership also includes the Home Secretary, the Secretary of State for Work and Pensions, the Secretary of State for Business, Innovation and Skills, the Chancellor of the Duchy of Lancaster and the Government Chief Whip.¹²

20. The Minister told us that the Whitehall system was intended to work “by network rather than by hierarchy”, with a system of senior officials in Number 10, the Cabinet Office, the Foreign and Commonwealth Office and HM Treasury, not to mention Brussels-based UK officials. When we asked him whom an EU interlocutor should speak to if they wished to engage with the Government’s chief negotiator, he told us that:

“It depends a bit on who in which other Government we are talking about. Politicians will want to talk to politicians, and civil servants to civil servants, but we are approaching this by having co-ordinated our positions among those individuals and key departments, so that whether somebody is calling me, somebody in the Prime Minister’s team or somebody in the Cabinet Office, they are going to get the same approach whomever they talk to.”¹³

21. **The Minister’s account of how the internal Whitehall process for handling the renegotiation will work is unrealistic. We well understand the political imperative of ensuring that key ministers, officials and Government departments are involved in the negotiation process. Yet it is also a recipe for confusion, not only in terms of the machinery of government, but also for Parliament as it seeks to hold the Government to account, and for interlocutors in the EU institutions and other Member States as they seek to engage with the renegotiation process. We urge the Government to reconsider how the mechanics of the Whitehall process can be made more efficient, so as to create clear and transparent lines of accountability and a swift mechanism for responding to queries and reaching decisions.**

The role of the EU institutions

22. We have also sought to clarify the respective roles of the EU institutions in the renegotiation process, notably the European Council, the European Commission and the European Parliament.

The European Council

23. The European Council is arguably the key EU institution in the process. The Minister for Europe told us that many of the technical discussions among officials would be undertaken by the Council secretariat, acting on behalf of and supervised by the European Council President, Donald Tusk. The Minister also confirmed that “any successful renegotiation will need to involve

¹¹ [Q 5](#)

¹² Membership of HM Government Cabinet Committees: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433440/150608_Committee_list_for_publication.pdf [accessed 14 July 2015]

¹³ [Q 5](#)

agreement at some stage by the Heads of State or Government meeting at the European Council”.¹⁴ The European Council will therefore be the principal forum for negotiation, in particular in the context of discussions at the December European Council.

24. In addition to President Tusk, another key interlocutor in the Council Secretariat is its new Secretary-General, Jeppe Tranholm-Mikkelsen. Mr Tranholm-Mikkelsen took on his new responsibilities on 1 July 2015, having previously been the Danish Permanent Representative to the EU. In addition, President Tusk’s Cabinet, led by Piotr Serafin, is likely to play a prominent role, though its precise responsibilities in the process have yet to be defined.
25. **The European Council will be the key forum for reaching agreement between the UK and the other 27 Member States. To that end, we welcome the European Council’s role in coordinating technical discussions under the leadership of President Tusk. We call on the Government to explain in greater detail what precise role Mr Tusk’s Cabinet, and the new Council Secretary-General, Jeppe Tranholm-Mikkelsen, will play in the process.**

The European Commission

26. The European Commission also has a crucial role to play, in particular given its responsibility for bringing forward legislative proposals in response to agreed reforms. The Minister for Europe stressed the importance of maintaining and building good working relationships with Commission President Jean-Claude Juncker and First Vice-President Frans Timmermans.¹⁵ They are likely to have a significant role both in providing political support for any reform package, and in coordinating the EU’s response to what is agreed. Another prominent figure is Martin Selmayr, Head of President Juncker’s Cabinet.
27. One important recent development was the appointment of Jonathan Faull, a highly experienced senior Commission official from the UK, to head a “Task Force for Strategic Issues Related to the UK Referendum”. The Task Force will begin its work on 1 September, and Mr Faull will report directly to President Juncker.¹⁶
28. The Minister was unsure at this stage how Mr Faull’s unit would operate in practice, though he thought it helpful that both he and senior officials in Government already had good working relationships with Mr Faull through his current responsibilities as Director-General for Financial Stability, Financial Services and Capital Markets Union.¹⁷ We too welcome the appointment of Mr Faull.

¹⁴ [QQ 6, 10](#)

¹⁵ [Q 10](#)

¹⁶ European Commission press release, *Continuity and change: Commission appoints new Secretary-General and reshuffles its senior management* (24 June 2015): http://europa.eu/rapid/press-release_IP-15-5252_en.htm [accessed 14 July 2015]. See also ‘EU Commission sets up Brexit unit’, *EUObserver* (24 June 2015): <https://euobserver.com/political/129269> [accessed 14 July 2015].

¹⁷ [Q 6](#)

29. **The European Commission will have a key role, not only in framing the legislative response to any reform agreement, but also in building political support for that agreement. We welcome the appointment of a new Task Force for strategic issues related to the UK referendum, under the leadership of Jonathan Faull, as a sign of the Commission's commitment to the process. We will seek to engage with Mr Faull, President Juncker, Vice-President Timmermans and Martin Selmayr, Head of President Juncker's Cabinet, in the months ahead.**

The European Parliament

30. The third element of the EU institutional triumvirate is the European Parliament. It too has an important role to play, in particular given that the Parliament's assent is likely to be required for any legislative proposals emerging from the process. The Minister acknowledged that the Government would need to respect and have regard to the European Parliament's co-legislative responsibilities under the Treaties. He also acknowledged the important role played by the President of the European Parliament, Martin Schulz, while conceding that no single person could represent the diverse range of views within the Parliament.¹⁸
31. The Minister told us that the Government was seeking to ensure that it was engaging with the European Parliament. He stressed that the Prime Minister and the Foreign Secretary had both met President Schulz. The Minister himself had visited the European Parliament, and had met the four largest political groups to explain the Prime Minister's position.¹⁹
32. **The European Parliament is a vital interlocutor in the process, and we were grateful for the opportunity to meet President Schulz on our recent visit to Brussels. It is essential that the Government does not overlook the role of the European Parliament in the reform process, as its approval is likely to be required for any legislative proposals that emerge. We urge the Government to maintain and enhance its contacts with President Schulz, the political groups, and MEPs both from the UK and other Member States. We will seek to strengthen our own working relationship with the European Parliament, both through existing mechanisms such as interparliamentary events and tripartite meetings, and through other bilateral contacts.**

Conclusion

33. **There are many actors in the renegotiation process among the EU institutions, but there is insufficient clarity about their specific roles and how they relate to one another. We urge the Government to identify its principal interlocutor in each institution, and to ensure that clear lines of communication with them are maintained. In the interests of transparency, we also call on the Government to keep us informed about the role of each institution (and the key individuals within them) in the renegotiation process.**

¹⁸ [Q 10](#)

¹⁹ [Q 7](#)

Engagement with other EU Member States

34. The other principal actors in the reform process are the 27 remaining Member States. The Minister stressed the work that had been undertaken to engage with them. He confirmed that the Prime Minister had spoken to all 27 other Heads of Government since the General Election, most of them in the context of face-to-face bilateral meetings. This had obviated the need for a detailed discussion at the June Council. The Foreign Secretary and the Minister for Europe himself were supplementing this engagement with their own meetings with Member State counterparts, including visits to other national capitals and discussions in the margins of meetings in Brussels and Luxembourg.²⁰
35. The Minister emphasised the “developed and continuing contact” with both the French and German Governments. While he acknowledged the significance of those countries in the way that the EU does business, he also stressed that “there will be elements of a reform package, particularly if we want something agreed at a European Council, that require the smallest of EU Member States also to be happy with what is being proposed, because there will be a need for unanimous agreement.”²¹
36. In our conversations with President Schulz and representatives of the EU institutions during our recent visit to Brussels, it was evident that the Prime Minister’s engagement with other Member States had had a significant and positive effect on the tenor of discussions. It is important that such engagement is not a one-off, or confined only to the largest Member States, but that it continues throughout the reform process and beyond.
37. It is also important that the Government and EU institutions take account of bilateral issues between the UK and other Member States where they arise. We cite as an example the report by the Joint Committee on European Union Affairs of the Houses of the Oireachtas on *UK/EU future relationship: implications for Ireland*. The Committee found that the question of UK membership of the EU “matters more to [Ireland] than to any other country in Europe. If our neighbour and major trading partner leaves the European Union, Ireland will be in a situation of being in the EU without it for the first time ever.”²²
38. Finally, the Government will need to bear in mind the constitutional arrangements in other Member States, which in some cases may require referendums to be held to ratify any proposed reforms. In evidence, the Minister for Europe confirmed that the Foreign and Commonwealth Office had undertaken “detailed analysis” of the constitutional requirements for referendums in other Member States, but was not prepared to share that analysis with the Committee.²³
39. **We support the Prime Minister’s welcome efforts to engage with the Heads of Government of the 27 other Member States in the run-up to the June European Council, which had a significant impact on the**

²⁰ Q 8

²¹ Q 9

²² Houses of the Oireachtas: Joint Committee on European Affairs, *UK/EU future relationship: implications for Ireland* (June 2015): <http://www.oireachtas.ie/parliament/media/committees/euaffairs/23-6-15-Report-UK-EU-Future-Relations.pdf> [accessed 14 July 2015]

²³ Q 12

tenor of discussions on the question of UK membership of the EU. We urge the Prime Minister, together with his ministerial colleagues, to ensure that this momentum is not lost as negotiations continue.

40. **In particular, we stress the need for the Government to engage with all Member States, regardless of size or perceived influence. Such engagement is vital if there is to be unanimous support for proposed reforms among Member States. Alongside this engagement, we recommend that the Government publish its analysis of the constitutional requirements for referendums in each Member State.**
41. **It is also important that the Government, together with the EU institutions, ensure that relevant bilateral concerns between the UK and individual Member States are taken into account during negotiations.**

Parliamentary accountability

42. Given the significance of these developments for the future of the UK, Parliament must be kept informed of and be given the means to hold the Government to account for its actions during the renegotiation process. In answers on his statement to the House of Commons on the June 2015 European Council, the Prime Minister said that he would “of course” keep Parliament informed.²⁴ The Minister for Europe told us that there were various existing mechanisms for doing so, including post-Council statements, parliamentary committee hearings, the existing process of scrutiny of EU legislation, and regular conversations with a broad range of members of both Houses of Parliament. The Minister also confirmed that the Foreign Secretary would be willing to appear before this Committee at a later date. The Minister undertook to “look for opportunities to keep Parliament informed and, just as important, to listen to the views of parliamentarians.”²⁵
43. Having said this, the Minister made clear that the Government was “not proposing to give a blow-by-blow account of a negotiation that will be in progress. I do not believe the Committee would expect that, and it is certainly not the way any previous British Government of any colour have conducted international negotiations.” When we asked him to confirm that Parliament would not be confronted with a *fait accompli* at the end of the process, the Minister was unable to do so, stating that “a lot will depend on how long the negotiations take and the processes and instruments by which reforms are agreed to be delivered.” He was, however, clear that “when the process of negotiation concludes, well ahead of the referendum date itself, the Government will want to make their view clear and set out their conclusions, the results of the negotiations and their recommendations, and I am sure there will be ample opportunities for Parliament to debate those matters.”²⁶
44. **We understand that the sensitivities of the process mean that the Government is unwilling to provide Parliament with a running commentary on the negotiations. Yet the opposite extreme of presenting Parliament with a *fait accompli* is equally undesirable, and could give rise to legitimate concerns about the accountability and**

²⁴ HC Deb, 29 June 2015, [col 1180](#)

²⁵ [Q 7](#)

²⁶ *Ibid.*

transparency of both the process itself, and its outcome. It could also help the Government to be open with Parliament (and also the general public) about the progress of negotiations.

45. **The Minister has highlighted existing mechanisms for ensuring parliamentary accountability. Yet the unique circumstances of the reform and referendum process call for an innovative approach. We welcome the Minister's commitment to look for opportunities to keep Parliament informed, and are ready to engage with him to ensure that the principles of parliamentary accountability can be maintained, while respecting the sensitivity of the negotiations.**
46. **In the meantime, we welcome the Foreign Secretary's commitment to appear before the Committee, and invite him to do so in the immediate aftermath of the December European Council. We also reiterate our commitment to holding pre-European Council evidence sessions with the Minister for Europe, and invite him to appear before the Committee immediately before both the October and December European Councils. We anticipate that further *ad hoc* meetings with Ministers may be needed, potentially at short notice, as discussions continue, and urge the Government to embrace any such opportunities to improve the quality and timeliness of information supplied to Parliament.**

Engagement with the devolved institutions

47. We asked the Minister how the Government intended to engage with the devolved institutions in Scotland, Wales and Northern Ireland. The Minister acknowledged that this question was being discussed at ministerial level. He stressed that UK membership of the EU was a reserved matter and that the devolved institutions would have no power of veto, but nevertheless agreed that it was important for their views and interests to be respected. The Minister cited the Joint Ministerial Committee²⁷ as an example of the institutional machinery available for engagement. He also undertook to visit all three devolved administrations later this year.²⁸
48. The specific issues applying to each of the devolved nations also need to be borne in mind. We asked the Minister to reflect on the implications of the changed political landscape in Scotland since the 2014 referendum on Scottish independence. He told us that he had a good working relationship with the Scottish Government, and anticipated that Scottish MPs at Westminster would be actively engaged in questions surrounding the renegotiation.²⁹ We also note the findings of the Oireachtas Joint Committee on European Affairs' report that UK withdrawal from the EU would have specific implications for Northern Ireland.³⁰

²⁷ For an examination of the role of the Joint Ministerial Committee, see Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014–15, HL Paper 146).

²⁸ [Q 6](#)

²⁹ [Q 7](#)

³⁰ Houses of the Oireachtas: Joint Committee on European Affairs, *UK/EU future relationship: implications for Ireland* (June 2015): <http://www.oireachtas.ie/parliament/media/committees/euaffairs/23-6-15-Report-UK-EU-Future-Relations.pdf> [accessed 14 July 2015]

49. **Given the profound implications for the nations of the UK of a referendum on membership of the EU, it is vital that the Government engage fully with the devolved institutions during the negotiations. The Government must ensure that the devolved administrations are not presented with a *fait accompli* at the end of the process, but rather are closely involved in negotiations so as to ensure that the specific interests of the nations of the UK are taken into account. We will seek to engage with our colleagues in the devolved legislatures over the coming months to ensure that such issues are brought to the Government's attention.**

Gibraltar and the Crown Dependencies

50. We also asked the Minister how the Government intended to engage with others who would be affected by UK exit from the EU, including Gibraltar and the Crown Dependencies. The Minister confirmed that he had spoken to the Chief Minister of Gibraltar, and that the UK Government would listen closely to any ideas the Government of Gibraltar wished to share regarding the negotiations. The Minister told us that there was detailed technical work under way in terms of organising the referendum there because of differences in electoral law. The Minister added that he was “always happy to listen” to what the Crown Dependencies had to say.³¹
51. **The implications of UK membership of the EU for Gibraltar and the Crown Dependencies are equally profound. We urge the Government to take proactive steps to ensure that their views and interests are taken into account during the negotiations.**

Treaty change

52. One of the most important questions posed by the renegotiation is whether, and to what extent, the EU Treaties will have to be changed as a consequence, and if this is not possible in the timescale envisaged for the referendum, what other documentary output will be produced pending treaty change.
53. In questions on his 29 June 2015 statement to the House of Commons, the Prime Minister was asked to confirm that there was no prospect of treaty change being ratified before the referendum takes place. He replied that “what matters when it comes to changing the treaties is making sure that there is agreement on the substance of the changes that we seek, which, of course, will involve treaty change. That is what matters, and that is what we hope to achieve.”³²
54. The Minister for Europe reaffirmed this, noting that, while some reforms could be achieved without recourse to treaty change, others would require it:

“The key principle is that the reforms need to be legally binding and not reversible at the drop of a hat ... it is not at all likely that by the end of 2017 one could have completed national ratifications of changes to the treaties, but part of any treaty process has to be agreement on the substance and then on the process of ratification ... So we say that there would need to be absolutely clear agreement by all 27 countries where

³¹ [Q 8](#)

³² HC Deb, 29 June 2015, [col 1180](#)

they have solemnly committed themselves to deliver on that package. That would be a unanimous decision of the European Council.”³³

55. The Minister said that it was too early to say what form a “solemn commitment” would take, although a legally binding protocol or draft clauses to be enacted in a treaty in due course were among the possible options. In his view:

“The point of principle as far as the Prime Minister and the Government are concerned is this: we have been clear that the reforms that we are seeking will need some treaty change; there will need to be agreement to those changes before the UK referendum; and we need to be confident that the reforms, assuming that they are agreed, are legally binding and not reversible.”³⁴

56. When pressed on why the Government was so wedded to treaty change, the Minister told us that “it is our belief that we will need elements of treaty change precisely to make sure that those relevant reforms have a secure legal status into the future and cannot simply be unpicked through later political decision.”³⁵ He was not, however, explicit as to which specific elements of the proposed reforms would require treaty change.
57. When we asked whether such a deal could be unpicked by a failure by an individual Member State to ratify the changes in a referendum, the Minister stated that it was premature to assume that the reforms would require referendums in other Member States. Nevertheless, his own statement that some of the reforms would require treaty change suggests that there is a likelihood that referendums will be triggered in at least some Member States. The Minister also stated that “we would look for very clear, very strong commitments from all Heads of Government that they would set their hand to a deal and see it accomplished.”³⁶
58. The Minister’s approach appears to overlook the possibility that there might be a change of government in another Member State between agreement of the renegotiation package and ratification of the treaty. What would happen if an incoming Member State Government refused to support the deal?
59. One precedent that is often mooted is the process by which Danish support for the 1992 Maastricht Treaty was secured. In June 1992, the Danish people narrowly rejected the Maastricht Treaty in a national referendum. The Treaty could only come into force with the support of all Member States. In order to solve the impasse, agreement was reached at a December 1992 meeting of the European Council in Edinburgh to grant Denmark opt-outs in the areas of Economic and Monetary Union, the Common Security and Defence Policy, Justice and Home Affairs and European Union citizenship. The agreement was legally binding and formed the basis for Denmark’s opt-outs in future EU treaties. Following the ‘Edinburgh Agreement’, a second Danish referendum was held in May 1993, when the Maastricht Treaty was ratified. It has been

³³ [Q 12](#)

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

suggested that such a model could be adopted in the case of the UK.³⁷ A further precedent may be the undertakings in European Council Conclusions³⁸ that were offered to Ireland before it held a second referendum on the Lisbon Treaty.

60. From the outline of the reform agenda,³⁹ however, it seems unlikely that the ‘simplified’ treaty revision procedure⁴⁰ could be used to achieve the Government’s objectives, as this is limited to amendments to Part III of the Treaty on the Functioning of the EU covering internal EU competences. Excluding the UK from the scope of ‘ever closer Union’, and increasing the powers of national parliaments, fall outside Part III. This means that the ‘ordinary’ (full) revision procedures⁴¹ would have to be employed, which requires the convening of a Convention, at which national parliaments would be represented, unless the European Parliament agrees that a Convention is unnecessary.
61. **The question of treaty change is a vital one. We agree with the Government that it is not feasible for changes to the EU Treaties to come into force ahead of a referendum to be held before the end of 2017. We also support the Government’s efforts to ensure that an agreement on key aspects of a reform deal is legally binding. Yet this is easier said than done. The 1992 Edinburgh Agreement model, by which Denmark secured legally binding opt-outs to be incorporated in future treaty change, may provide a helpful model. The guarantees offered to Ireland before its second referendum on the Lisbon Treaty, which were contained in Conclusions of the European Council, may be a further model to consider. Whichever precedent is followed, we urge the Government to clarify as soon as possible the precise means by which any agreement will be made binding and will be implemented. It must also be ensured that any documentary outcome provides a sufficient means by which the Government can be held to account both by Parliament and the wider public ahead of the referendum campaign.**
62. **The Government has stated that any agreement would require treaty change, but it has not explained precisely why this should be so. We reserve judgment on whether treaty change is required, pending publication of the final outcome of negotiations. In the meantime we seek the Government’s view as to whether it agrees that, from the outline of the reform agenda, it seems unlikely that the ‘simplified’ treaty revision procedure could be used to achieve the Government’s objectives.**

³⁷ Open Europe, *A blueprint for reform of the European Union* (June 2015): http://openeurope.org.uk/wp-content/uploads/2015/06/Open_Europe_Blueprint_for_EU_Reform.pdf [accessed 14 July 2015]

³⁸ Presidency Conclusions of the Brussels European Council of 11 and 12 December (17271/08), paras 3 and 4 and Annex 1.

³⁹ See Chapter 3.

⁴⁰ Article 48(6) TEU

⁴¹ Article 48(2)-(5) TEU

CHAPTER 3: THE AGENDA FOR RENEGOTIATION

The Government's priorities

63. The Government's reform priorities have gradually come into focus, even if, in the absence of a definitive document, the precise parameters remain undefined. In his January 2013 Bloomberg speech, the Prime Minister set out five principles underpinning his vision of a reformed European Union: competitiveness, flexibility, power flowing back to Member States, democratic accountability, and fairness for members and non-members of the eurozone alike.⁴²
64. The Conservative 2015 General Election Manifesto elaborated on these themes. It committed a Conservative Government to preserve the integrity of the Single Market by securing protections for countries outside the eurozone; to provide national parliaments with the power to work together to block unwanted EU legislation; to end the UK's commitment to 'ever closer Union'; to ensure that UK defence policy remained under UK control; to expand the Single Market, breaking down barriers to trade and ensuring that new sectors are opened up to UK firms; to resist EU attempts to restrict legitimate financial services activities; and to press for lower EU spending, reform of the Common Agricultural Policy and Structural Funds, and for EU spending to be focused on jobs and growth.⁴³
65. In addition, the manifesto stated that "we will negotiate new rules with the EU, so that people will have to be earning here for a number of years before they can claim benefits, including the tax credits that top up low wages."⁴⁴ Although the manifesto was unequivocal that the latter commitment would form part of the deal to be put to the people in a referendum, it was unclear which of the other commitments would form an explicit part of the renegotiation process.
66. In his statement to the House of Commons following the June 2015 European Council, the Prime Minister said that the proposed reforms had crystallised around four themes—sovereignty, fairness, immigration and competitiveness:
- "First, on sovereignty, Britain will not support being part of an ever-closer union or being dragged into a state called Europe—that may be for others, but it will never be for Britain, and it is time to recognise that specifically. We want national Parliaments to be able to work together to have more power, not less.
- Secondly, on fairness, as the eurozone integrates further, the EU has to be flexible enough to make sure that the interests of those inside and outside the eurozone are fairly balanced. Put simply, the single currency is not for all, but the single market and the European Union as a whole must work for all.

⁴² Speech by the Prime Minister on EU at Bloomberg, 23 January 2013: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg> [accessed 14 July 2015]

⁴³ Conservative Party, *Strong Leadership, a clear economic plan, a brighter, more secure future: The Conservative Party manifesto 2015*: <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf> [accessed 14 July 2015]

⁴⁴ *Ibid.*

Thirdly, on immigration, we need to tackle the welfare incentives that attract so many people from across the EU to seek work in Britain.

Finally, alongside all those, we need to make the EU a source of growth, jobs, innovation and success, rather than stagnation. That means signing trade deals and completing the single market, such as in digital, where the Council made progress towards a roaming agreement that could cut the cost of mobile phone bills for businesses and tourists alike.”⁴⁵

67. The Minister for Europe summarised the Prime Minister’s four priorities as follows:

“We are seeking a package of reforms that will make Europe more prosperous for all Europeans, that will enable people in every European country to feel that European decisions and European institutions are better connected and more accountable to ordinary people than now, that will make Europe more competitive, democratic and flexible than it is today and that, as part of that package of benefits to all European countries, will help the British people to feel more comfortable about their place in the European Union.”⁴⁶

68. The Minister focused in particular on competitiveness, stating that the previous Coalition Government’s Balance of Competences Review had revealed that EU regulation had imposed unnecessarily burdensome costs on businesses, and that the Single Market was “woefully underdeveloped when it comes to services”. The Minister welcomed the new Commission’s prioritisation of the digital single market and Vice-President Timmermans’ Better Regulation agenda. He also stressed that trade was an “absolutely essential part of greater competitiveness”.⁴⁷ He suggested that reforms in this area could be achieved without treaty change.⁴⁸
69. Our conversations with representatives of the EU institutions and other Member States have shown that interlocutors are anxious to receive more details on the precise objectives of the UK Government in the renegotiation process. Yet there is a growing consensus that, while reforms such as a UK opt-out from ‘ever closer Union’ may prove relatively simple to agree, other areas, notably the contentious question of freedom of movement and welfare payments, are likely to prove more difficult.
70. **While the Government’s priorities for reform are gradually crystallising, their precise parameters remain undefined. We appreciate that the Government is seeking to maximise its room for manoeuvre. Nevertheless, the onus is on the Government both to explain what it is seeking to achieve and the means by which it is seeking to achieve it. Clarity is needed so that Parliament can hold Government to account, so that partners in the EU institutions and other Member States can understand and respond to the UK’s position, and so that the process is seen as a genuine one, enabling the electorate to make an informed decision in the referendum.**

⁴⁵ HC Deb, 29 June 2015, [col 1176](#)

⁴⁶ [Q 4](#)

⁴⁷ [Q 14](#)

⁴⁸ [Q 12](#)

71. **It would be premature at this stage to examine the Government’s policy priorities in detail, but we shall scrutinise specific proposals for reform as they emerge in the coming months. We invite the Government to provide regular written updates on its progress in refining these reform objectives, in order to inform our scrutiny work and that of committees of both Houses.**

The role of national parliaments

72. The one reform priority which we are in a position to comment on in detail at this point, in particular given the implications for our own role, is the Government’s proposal to enhance the role of national parliaments. As set out above, the Government envisages national parliaments being able to work together to block unwanted legislation—a so-called ‘Red Card’ mechanism.⁴⁹ The Minister for Europe told us that “the Red Card would add something to our armoury. National parliaments being able to say in sufficient numbers, ‘Look, this point clearly does not command democratic consent across Europe as a whole, so call a halt’, would, it seems to me, be a constitutional check that a sensible Europe would find a place for.”⁵⁰
73. The Minister conceded that enhancing the role of national parliaments would be challenging. He said that one of the problems with the existing ‘Yellow Card’ procedure⁵¹ was that it was narrowly focused on the question of subsidiarity rather than proportionality. This, together with the short window of time available to national parliaments to submit a Reasoned Opinion, partly explained why national parliaments had thus far only issued two Yellow Cards.⁵²
74. The Minister also argued that national parliaments needed to adjust their own procedures so as to respond more rapidly and coordinate more effectively:
- “Just as governments around Europe have had to get used to the idea of picking up the phone or texting ministers regularly and trying to construct agreements, compromises and common positions, so will parliaments, if the system is to work well, need to develop that sort of networking approach too.”⁵³
75. The Minister concluded that these issues meant that it might be necessary to pursue the Government’s objectives on the role of national parliaments “in some sort of parallel process”, rather than directly through the negotiations.⁵⁴

⁴⁹ The EU Treaties already provide for what is sometimes called a ‘Red Card’ procedure. Protocol (No) 2 on Subsidiarity and Proportionality provides that a national parliament, acting through its Member State, may bring a case before the EU Court of Justice, arguing that an adopted legislative act does not comply with the principle of subsidiarity and so should be annulled. Although the procedure has never been used, this Committee has mooted the possibility of it being used in relation to the Commission’s Proposal for a Directive on the activities and supervision of institutions for occupation retirement provision (recast).

⁵⁰ [Q 15](#)

⁵¹ Under the Lisbon Treaty, if Reasoned Opinions are submitted comprising more than one third of the total votes of national parliaments (a Yellow Card), the Commission must review the proposal and “may decide to maintain, amend or withdraw” it. “Reasons must be given for this decision” (Article 7(2), Protocol 2).

⁵² [Q 15](#)

⁵³ *Ibid.*

⁵⁴ [Q 16](#)

Nevertheless, he judged that there was a keen appetite for reforms in this area across a number of EU Member States.⁵⁵

76. Our 2014 report on *The role of National Parliaments in the European Union* set out our own proposals for reform. We called for an extension of the scope of the Reasoned Opinion procedure to include the proportionality principle (that is, that the proposal should not exceed what is necessary to achieve the objectives of the EU Treaties); an increase in the deadline for national chambers to issue a reasoned opinion on a legislative proposal, from eight weeks to 12 or 16 weeks; and for the Council and Commission to undertake that, if a Yellow Card is issued, the Commission would take seriously its duty of review, and either withdraw or substantially amend the proposal in question.⁵⁶

The Green Card

77. Our report on national parliaments also recommended that:

“There should be a way for a group of likeminded national parliaments to make constructive suggestions for EU policy initiatives, which may include reviewing existing legislation, complementing the existing ‘Yellow Card’ with a ‘Green Card’ ... We would envisage a ‘Green Card’ as recognising a right for a number of national parliaments working together to make constructive policy or legislative suggestions, including for the review or repeal of existing legislation, not creating a (legally more problematic) formal right for national parliaments to initiate legislation. A ‘Green Card’ agreement would need to include an undertaking by the Commission that it would consider such suggestions carefully, and either bring forward appropriate legislative or other proposals (or consult on them), or explain why it had decided not to take the requested.”⁵⁷

78. Support for the Green Card has increased since our report was published, thanks in part to debates at the COSAC conferences in Rome in December 2014 and in Riga in June 2015, and at the COSAC Chairpersons conference in Luxembourg in July 2015. In June 2015, following the Riga COSAC, we proposed a pilot Green Card on food waste, which, at the time of publication, had gained the support of representatives of 15 other national parliaments.
79. The Minister described the Green Card pilot as “a very welcome initiative ... as a way of shifting the political culture for the better within the EU, to have better decisions that are better connected to citizens.” When we asked him if the Government would include the Green Card in its reform agenda, he told us that “this is a very constructive and creative proposal. I would be delighted if we could get this included, but what I do not want to do is to suggest exactly where this might stand in terms of a whole range of objectives that we are seeking.”⁵⁸
80. **We welcome the Government’s efforts to enhance the role of national parliaments as part of the reform agenda, and note that much of the**

⁵⁵ [Q 15](#)

⁵⁶ European Union Committee, *The role of National Parliaments in the European Union* (9th Report, Session 2013–14, HL Paper 151)

⁵⁷ *Ibid.*

⁵⁸ [Q 16](#)

Minister for Europe’s thinking chimes with the findings of our report on *The role of National Parliaments in the European Union*. While we have no principled objection to the Government’s proposal for a Red Card, we are concerned that, viewed in isolation, it could give the misleading impression that national parliaments should only play a blocking role in relation to the EU legislative process. A more pressing requirement is reform of the existing Reasoned Opinion and Yellow Card procedure.

81. **If the Government is serious about enhancing the role of national parliaments, it should also explore means, such our own proposal for a Green Card, by which national parliaments could make a positive, proactive contribution to the development of EU policies and legislation.**
82. **We do not underestimate the challenges that must be overcome if national parliaments are to play an enhanced role in the EU democratic process. Improved mechanisms for cooperation and coordination between national parliaments need to be devised, with the necessary resources provided to ensure they operate effectively. It is also essential to bear in mind the question of the relationship between the European Parliament and national parliaments. We reiterate the conclusion of our report on national parliaments, that national parliaments and the European Parliament have a vital, and complementary, role to play in the European Union.⁵⁹ It is not a ‘zero sum’ game: greater involvement for one should not be at the expense of the other. There is scope for national parliaments and the European Parliament to engage more effectively with each other, sharing information and debating key policies.**
83. **We note the Minister for Europe’s suggestion that it may be necessary to pursue discussions on the role of national parliaments in a parallel process. We stand ready to engage with the Government, our colleagues in the House of Commons and other EU national parliaments, the European Parliament and the EU institutions in supporting this process.**

Overall conclusions

84. **The Prime Minister launched the reform process with a short presentation at the June 2015 European Council. The agenda at that meeting underlined that the question of UK membership of the EU is only one of several fundamental issues facing the EU: the Greek financial crisis, the Mediterranean migration crisis, and continuing EU/Russia tensions are all, individually, enough to consume the energies of the EU institutions and Member States. EU colleagues will therefore not be focused solely on the UK’s concerns in the months ahead.**
85. **Nevertheless, the process that has now started presents significant challenges and opportunities, not only for the UK, but for the EU as a whole. As the Prime Minister has stated, the package of reforms that**

⁵⁹ European Union Committee, *The role of National Parliaments in the European Union* (9th Report, Session 2013–14, HL Paper 151)

are to be discussed should be for the benefit of every nation and citizen of the EU, not just the UK. In this report we have sought to begin shedding light not just on the proposed reforms, but the process by which the Government seeks to achieve them. We will continue to engage with the Government, the EU institutions and other Member States as the negotiations progress in the coming months.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The reform process

1. It appears likely that the Government's preferred course is for discussions on reform to be completed as early in 2016 as possible, with a referendum following by the autumn of 2016 at the latest. Yet the Government is understandably nervous about committing itself to such a timetable given the potential for delay or disruption. We support the Government's efforts to ensure that the referendum takes place as soon as possible, in order to minimise uncertainty for citizens, financial markets, businesses and other stakeholders in the UK and across the EU. (Paragraph 12)
2. The UK Presidency of the Council scheduled for the second half of 2017 makes the arguments for an earlier referendum all the stronger. To stage a referendum on the UK's membership of the EU while it holds the Presidency would not only be highly undesirable, but also so difficult as to be practically impossible. It would be an insuperable distraction from any Presidency policy priorities that the UK sought to set out. (Paragraph 15)
3. On the other hand, an earlier referendum would create the possibility that the UK may have voted to leave the EU before its Presidency takes place. This would make a UK Presidency in 2017 politically untenable. (Paragraph 16)
4. On balance, we believe that the Government is at this stage right to press ahead with its plans for the Presidency in 2017. If, however, it were to become clear in coming months that the pace of negotiations is likely to prevent a referendum being held before the end of 2016, we recommend that the Government should explore alternatives, which could involve requesting one of the succeeding Presidencies to move forward to the second half of 2017. (Paragraph 17)
5. The Minister's account of how the internal Whitehall process for handling the renegotiation will work is unrealistic. We well understand the political imperative of ensuring that key ministers, officials and Government departments are involved in the negotiation process. Yet it is also a recipe for confusion, not only in terms of the machinery of government, but also for Parliament as it seeks to hold the Government to account, and for interlocutors in the EU institutions and other Member States as they seek to engage with the renegotiation process. We urge the Government to reconsider how the mechanics of the Whitehall process can be made more efficient, so as to create clear and transparent lines of accountability and a swift mechanism for responding to queries and reaching decisions. (Paragraph 21)
6. The European Council will be the key forum for reaching agreement between the UK and the other 27 Member States. To that end, we welcome the European Council's role in coordinating technical discussions under the leadership of President Tusk. We call on the Government to explain in greater detail what precise role Mr Tusk's Cabinet, and the new Council Secretary-General, Jeppe Tranholm-Mikkelsen, will play in the process. (Paragraph 25)
7. The European Commission will have a key role, not only in framing the legislative response to any reform agreement, but also in building political support for that agreement. We welcome the appointment of a new Task Force for strategic issues related to the UK referendum, under the leadership of

Jonathan Faull, as a sign of the Commission's commitment to the process. We will seek to engage with Mr Faull, President Juncker, Vice-President Timmermans and Martin Selmayr, Head of President Juncker's Cabinet, in the months ahead. (Paragraph 29)

8. The European Parliament is a vital interlocutor in the process, and we were grateful for the opportunity to meet President Schulz on our recent visit to Brussels. It is essential that the Government does not overlook the role of the European Parliament in the reform process, as its approval is likely to be required for any legislative proposals that emerge. We urge the Government to maintain and enhance its contacts with President Schulz, the political groups, and MEPs both from the UK and other Member States. We will seek to strengthen our own working relationship with the European Parliament, both through existing mechanisms such as interparliamentary events and tripartite meetings, and through other bilateral contacts. (Paragraph 32)
9. There are many actors in the renegotiation process among the EU institutions, but there is insufficient clarity about their specific roles and how they relate to one another. We urge the Government to identify its principal interlocutor in each institution, and to ensure that clear lines of communication with them are maintained. In the interests of transparency, we also call on the Government to keep us informed about the role of each institution (and the key individuals within them) in the renegotiation process. (Paragraph 33)
10. We support the Prime Minister's welcome efforts to engage with the Heads of Government of the 27 other Member States in the run-up to the June European Council, which had a significant impact on the tenor of discussions on the question of UK membership of the EU. We urge the Prime Minister, together with his ministerial colleagues, to ensure that this momentum is not lost as negotiations continue. (Paragraph 39)
11. In particular, we stress the need for the Government to engage with all Member States, regardless of size or perceived influence. Such engagement is vital if there is to be unanimous support for proposed reforms among Member States. Alongside this engagement, we recommend that the Government publish its analysis of the constitutional requirements for referendums in each Member State. (Paragraph 40)
12. It is also important that the Government, together with the EU institutions, ensure that relevant bilateral concerns between the UK and individual Member States are taken into account during negotiations. (Paragraph 41)
13. We understand that the sensitivities of the process mean that the Government is unwilling to provide Parliament with a running commentary on the negotiations. Yet the opposite extreme of presenting Parliament with a *fait accompli* is equally undesirable, and could give rise to legitimate concerns about the accountability and transparency of both the process itself, and its outcome. It could also help the Government to be open with Parliament (and also the general public) about the progress of negotiations. (Paragraph 44)
14. The Minister has highlighted existing mechanisms for ensuring parliamentary accountability. Yet the unique circumstances of the reform and referendum process call for an innovative approach. We welcome the Minister's commitment to look for opportunities to keep Parliament informed, and are ready to engage with him to ensure that the principles of parliamentary

accountability can be maintained, while respecting the sensitivity of the negotiations. (Paragraph 45)

15. In the meantime, we welcome the Foreign Secretary's commitment to appear before the Committee, and invite him to do so in the immediate aftermath of the December European Council. We also reiterate our commitment to holding pre-European Council evidence sessions with the Minister for Europe, and invite him to appear before the Committee immediately before both the October and December European Councils. We anticipate that further *ad hoc* meetings with Ministers may be needed, potentially at short notice, as discussions continue, and urge the Government to embrace any such opportunities to improve the quality and timeliness of information supplied to Parliament. (Paragraph 46)
16. Given the profound implications for the nations of the UK of a referendum on membership of the EU, it is vital that the Government engage fully with the devolved institutions during the negotiations. The Government must ensure that the devolved administrations are not presented with a *fait accompli* at the end of the process, but rather are closely involved in negotiations so as to ensure that the specific interests of the nations of the UK are taken into account. We will seek to engage with our colleagues in the devolved legislatures over the coming months to ensure that such issues are brought to the Government's attention. (Paragraph 49)
17. The implications of UK membership of the EU for Gibraltar and the Crown Dependencies are equally profound. We urge the Government to take proactive steps to ensure that their views and interests are taken into account during the negotiations. (Paragraph 51)
18. The question of treaty change is a vital one. We agree with the Government that it is not feasible for changes to the EU Treaties to come into force ahead of a referendum to be held before the end of 2017. We also support the Government's efforts to ensure that an agreement on key aspects of a reform deal is legally binding. Yet this is easier said than done. The 1992 Edinburgh Agreement model, by which Denmark secured legally binding opt-outs to be incorporated in future treaty change, may provide a helpful model. The guarantees offered to Ireland before its second referendum on the Lisbon Treaty, which were contained in Conclusions of the European Council, may be a further model to consider. Whichever precedent is followed, we urge the Government to clarify as soon as possible the precise means by which any agreement will be made binding and will be implemented. It must also be ensured that any documentary outcome provides a sufficient means by which the Government can be held to account both by Parliament and the wider public ahead of the referendum campaign. (Paragraph 61)
19. The Government has stated that any agreement would require treaty change, but it has not explained precisely why this should be so. We reserve judgment on whether treaty change is required, pending publication of the final outcome of negotiations. In the meantime we seek the Government's view as to whether it agrees that, from the outline of the reform agenda, it seems unlikely that the 'simplified' treaty revision procedure could be used to achieve the Government's objectives. (Paragraph 62)

The agenda for renegotiation

20. While the Government's priorities for reform are gradually crystallising, their precise parameters remain undefined. We appreciate that the Government is seeking to maximise its room for manoeuvre. Nevertheless, the onus is on the Government both to explain what it is seeking to achieve and the means by which it is seeking to achieve it. Clarity is needed so that Parliament can hold Government to account, so that partners in the EU institutions and other Member States can understand and respond to the UK's position, and so that the process is seen as a genuine one, enabling the electorate to make an informed decision in the referendum. (Paragraph 70)
21. It would be premature at this stage to examine the Government's policy priorities in detail, but we shall scrutinise specific proposals for reform as they emerge in the coming months. We invite the Government to provide regular written updates on its progress in refining these reform objectives, in order to inform our scrutiny work and that of committees of both Houses. (Paragraph 71)
22. We welcome the Government's efforts to enhance the role of national parliaments as part of the reform agenda, and note that much of the Minister for Europe's thinking chimes with the findings of our report on *The role of National Parliaments in the European Union*. While we have no principled objection to the Government's proposal for a Red Card, we are concerned that, viewed in isolation, it could give the misleading impression that national parliaments should only play a blocking role in relation to the EU legislative process. A more pressing requirement is reform of the existing Reasoned Opinion and Yellow Card procedure. (Paragraph 80)
23. If the Government is serious about enhancing the role of national parliaments, it should also explore means, such our own proposal for a Green Card, by which national parliaments could make a positive, proactive contribution to the development of EU policies and legislation. (Paragraph 81)
24. We do not underestimate the challenges that must be overcome if national parliaments are to play an enhanced role in the EU democratic process. Improved mechanisms for cooperation and coordination between national parliaments need to be devised, with the necessary resources provided to ensure they operate effectively. It is also essential to bear in mind the question of the relationship between the European Parliament and national parliaments. We reiterate the conclusion of our report on national parliaments, that national parliaments and the European Parliament have a vital, and complementary, role to play in the European Union. It is not a 'zero sum' game: greater involvement for one should not be at the expense of the other. There is scope for national parliaments and the European Parliament to engage more effectively with each other, sharing information and debating key policies. (Paragraph 82)
25. We note the Minister for Europe's suggestion that it may be necessary to pursue discussions on the role of national parliaments in a parallel process. We stand ready to engage with the Government, our colleagues in the House of Commons and other EU national parliaments, the European Parliament and the EU institutions in supporting this process. (Paragraph 83)

Overall conclusions

26. The Prime Minister launched the reform process with a short presentation at the June 2015 European Council. The agenda at that meeting underlined that the question of UK membership of the EU is only one of several fundamental issues facing the EU: the Greek financial crisis, the Mediterranean migration crisis, and continuing EU/Russia tensions are all, individually, enough to consume the energies of the EU institutions and Member States. EU colleagues will therefore not be focused solely on the UK's concerns in the months ahead. (Paragraph 84)
27. Nevertheless, the process that has now started presents significant challenges and opportunities, not only for the UK, but for the EU as a whole. As the Prime Minister has stated, the package of reforms that are to be discussed should be for the benefit of every nation and citizen of the EU, not just the UK. In this report we have sought to begin shedding light not just on the proposed reforms, but the process by which the Government seeks to achieve them. We will continue to engage with the Government, the EU institutions and other Member States as the negotiations progress in the coming months. (Paragraph 85)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Armstrong of Hill Top
 Lord Blair of Boughton
 Lord Borwick
 Lord Boswell of Aynho (Chairman)
 The Earl of Caithness
 Lord Davies of Stamford
 Baroness Falkner of Margravine
 Lord Green of Hurstpierpoint
 Lord Jay of Ewelme
 Baroness Kennedy of The Shaws
 Lord Liddle
 Lord Mawson
 Baroness Prashar
 Baroness Scott of Needham Market
 Baroness Suttie
 Lord Trees
 Lord Tugendhat
 Lord Whitty
 Baroness Wilcox

Declarations of interest

Baroness Armstrong of Hill Top
Chair, Changing Lives (a charity based in Tyneside which may benefit from European Union funds)
Member, Advisory Board, GovNet Communications (publisher and event organiser)
Trustee, Africa Governance Initiative
Trustee, Voluntary Service Overseas

Lord Blair of Boughton QPM
No relevant interest declared

Lord Borwick
Shareholdings as set out in the Register of Lords' Interests

Lord Boswell of Aynho (Chairman)
In receipt of salary as Principal Deputy Chairman of Committees, House of Lords
Shareholdings as set out in the Register of Lords' Interests
Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottages and grazing
Land at Great Leighs, Essex (one-third holding, with balance held by family interests), from which rental income is received
House in Banbury owned jointly with wife, from which rental income is received
Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

The Earl of Caithness
Shareholdings as set out in the Register of Lords' Interests

Lord Davies of Stamford

Owns a flat in France (sometimes rented out)

Land let for grazing in Lincolnshire

Baroness Falkner of Margravine

Member, Advisory Board, Cambridge YouGov Stone (market research and events agency)

Member, British Steering Committee: Koenigswinter, The British-German Conference

Vice President, Liberal International: The International Network of Liberal Parties

Member, Advisory Board, British Influence

Member, Advisory Board, Demos

Ownership of a house in Italy, jointly owned with member's husband

Non-Executive Director, Hyde Group

Member, House of Lords Foreign Policy Network

Lord Green of Hurstpierpoint

Shareholdings as set out in the Register of Lords' Interests

Chair, International Advisory Council, British Chambers of Commerce

Chair, Advisory Council for the Centre for Anglo-German Cultural Relations, Queen Mary University, London

Chair, Natural History Museum

Lord Jay of Ewelme

Non-Executive Director, Associated British Foods

Trustee, Thomson Reuters Founders Share Company

Chairman, British Library Advisory Council

Vice-Chairman, Business for New Europe

Member, Chatham House Panel of Senior Advisers

Member, Senior European Experts Group

Baroness Kennedy of The Shaws

Chair, Justice

Chair, International Bar Association's Human Rights Institute

Lord Liddle

Chair, Policy Network and Communications Ltd (a think tank that publishes widely on EU issues)

Co-author of a report which the City of London Corporation commissioned Policy Network to write on developments in thinking on the regulation of financial services in the European Union

Personal assistant at Policy Network carries out secretarial work which includes work in relation to the member's parliamentary duties

Lord Mawson

No relevant interest declared

Baroness Prashar

Deputy Chair, British Council

President, UK Council for International Student Affairs

Baroness Scott of Needham Market

No relevant interest declared

Baroness Suttie

Associate with Global Partners Governance Limited in respect of their Foreign and Commonwealth Office contract to provide mentoring and training for parliamentarians and their staff in Jordan

Trustee, Institute for Public Policy Research (IPPR)

Campaign Council Member, British Influence

Lord Trees

Chair, Moredum Research Institute, Edinburgh (independent animal health research institute) which applies for competitive research grants from the EU

Lord Tugendhat

Shareholdings as set out in the Register of Lords' Interests

Chairman, Advisory Council, European Policy Forum

Member of Advisory Council, Official Monetary and Financial Institutions Forum Limited

Member of Advisory Council of the Institute of Policy Research, University of Bath

Former Member and Vice President of the European Commission, in receipt of a pension from the Commission

Lord Whitty

Chair, Road Safety Foundation

Chair, Cheshire Lehmann Fund

Vice President, Environmental Protection UK

Vice President, Local Government Association

Vice President, Chartered Trading Standards Institute

Board Member, Smith Institute

Member, GMB

Baroness Wilcox

Shareholdings as set out in the Register of Lords' Interests

A full list of Members' interests can be found in the Register of Lords Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>