

# The UK's Democratic Moment on 'Europe'?

Report of the hearing held on 22nd March 2016



LSE Commission on the Future of Britain in Europe

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## Foreword

This is the report of the 8th Expert Hearing of the LSE Commission on the Future of Britain in Europe that took place at the LSE on the 22 March 2016. The LSE Commission was initiated in the autumn 2015 to inform the British referendum debate, and the Commission's Expert Hearings have resulted in a series of debates and publications on a broad range of topics, including the consequences of Brexit for migration and refugee policy, the UK and EU economy and financial sector, and higher education.

This Hearing brought together leading scholars, pollsters, diplomats and politicians to discuss two crucial aspects of the democratic legitimacy of Britain's relationship with the EU: the upcoming referendum on British membership and the role of national parliaments in EU decision-making. Participants were invited for their expertise on referendums, public opinion, and parliaments, and not for any particular views they may hold about Britain's relationship to the EU.

We are extremely grateful for the insightful contributions by the participants during the hearing as well as for the written submissions by the experts that took part. This report is based on both the debate as well as the written material. None of the views or conclusions included in this report can be attributed to a single individual listed in the participant list, but are rather the summary views and conclusions drawn from the collective discussion. Where specific evidence or research contributions are mentioned, we have included references to the authors after seeking their permission. We take full responsibility for the conclusions as well as any errors contained in the report.

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*London, 25 April 2016*

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## 1. Introduction

One of the main criticisms of the European Union, both in the UK and in the rest of Europe, is that decisions taken in the Union lack democratic legitimacy. EU policy-making is often said to concentrate power in the hands of national executives and bureaucrats in Brussels, thus reducing the powers of national parliaments and national electorates. This is referred to as the “democratic deficit”. This Expert Hearing brought together leading scholars, pollsters, diplomats and politicians to discuss two crucial developments in UK-EU relations that in different ways address this democratic deficit. The first is the upcoming referendum on British membership of the European Union, which gives voters a say on the future of Britain in the EU for the first time since 1975. The second is the proposed reform, spearheaded by the British government, that aims to strengthen the role of national parliaments in EU decision-making. Do these initiatives constitute a ‘democratic moment’ that is likely to render the EU more democratically legitimate in the eyes of British voters? What will a referendum outcome of ‘Remain’ or ‘Brexit’ mean in terms of the mandate voters give to the UK government? And, do national parliaments hold the key to greater legitimacy in EU politics? These questions were addressed in two inter-related sessions of the Expert Hearing, starting with the discussion of the referendums on European integration and public attitudes towards the EU.

## 2. Summary

The conclusions of the hearing's discussions were that:

- Past referendum experiences in the UK and abroad show EU referendums are highly unpredictable and campaigns are decisive. Of key importance is the framing of the referendum question, potential status quo bias and the popularity of the government of the day.
- Vote intentions have so far remained very stable in the Brexit debate, with the Leave and Remain sides neck and neck. Yet, the campaign may still shift attitudes and turnout could be important, with Brexiteers more likely to turn out on the day.
- Public attitudes towards membership are shaped by perceptions of economic consequences of Brexit (which favour Remain) vs. sovereignty and identity questions (which favour Leave). Young and well-educated voters tend to be more pro-EU, whereas older and less-skilled workers are found to be more Eurosceptic. Ultimately, risk aversion may sway a majority to support Remain.
- As part of the ongoing debate on democracy and sovereignty, the government has secured agreement for an enhanced role for national parliaments in EU affairs. The agreement will have little impact in policy-making, but sends an important political signal. It has already been followed up by proposals from House of Commons and House of Lords designed to increase their standing in UK-EU affairs.
- National parliaments fulfil an important role as the arena for questioning, explaining and justifying EU policies. Yet, they differ greatly in their formal scrutiny powers and practices. The appropriate degree of influence by parliaments and their committees is a matter of political conviction, but one recommendation is to treat EU affairs as part of 'domestic policy' rather than a branch of 'foreign affairs'.
- The mandate that follows from the referendum – whether 'Brexit' or 'Remain' – is unclear. If the outcome is to remain, it is likely that the UK parliament, and national parliaments elsewhere, will seek ways to engage more actively with EU affairs. If the outcome is 'Brexit', the UK Parliament will be presented with an entirely new set of challenges as the government seeks to secure new arrangements with the remaining EU member states.

## 3. The Brexit Referendum

### 3.a. Lessons from other EU referendums

When Britain goes to the polls on 23 June 2016 to vote on whether to stay in or leave the European Union, it will be following in the footsteps of many other European countries. Since the early 1970s, over 50 referendums have been held across Europe on various aspects of European integration. The experts at the Hearing discussed which lessons can be learned from other EU referendums, including the 1975 referendum on British membership of the European Economic Community. There was a broad consensus that referendums on the EU are generally highly unpredictable and that the campaigns are often decisive to the outcome.

A key lesson is therefore that governments should never be complacent about the outcome of a referendum on the EU. Since 2000, there have been 23 EU referendums and in eight of these a majority of voters rejected a proposal that had the broad backing of the mainstream political parties, the media, trade unions and business organisations. Such 'No' votes even occurred in countries that are traditionally very pro-European, including Ireland and France. Between them, these referendum experiences have revealed four key characteristics of ballots on the EU: The campaign matters, party messages are important, the framing of the "reversion point" and status quo bias matter, and, finally, EU referendums are not just about the EU.

First, the campaign matters. The polls during the early stages of a referendum campaign often give a very poor indication of the actual outcome of the vote. Attitudes towards the EU are far more malleable than vote intentions in general elections. Many voters will change their minds as the referendum campaign progresses. And many remain undecided until they cast their vote.

Second, parties are crucial in structuring the debate and the choices that voters face. During referendum campaigns, voters tend to turn to the political parties to which they feel closest for guidance on which way to vote. Yet when parties are openly split on the question party messages have a much weaker effect. In the UK both the Conservative Party and, to a lesser degree, the Labour Party have displayed internal division likely to weaken the impact of their recommendations to voters.

Thirdly, the framing of the question matters hugely, in particular when it comes to the consequences of voting for Brexit or Remain. Voters face uncertainty not only about what Britain's future within the European Union will look like, but also crucially what will happen if they vote to leave the EU. The "reversion point", or the consequences of rejecting the proposal, has been shown to be a critical determinant of how people vote in EU referendums. Voters are generally risk averse, and hence when the "reversion point" is presented as a radical break with the status quo, or is associated with great uncertainty, this favours the 'Remain' side.

Research on previous referendums and polls has also shown that there is generally a small shift towards the status quo (the Remain side in this case) in the final weeks of the campaign, whereas earlier polls tend to overestimate voters' desire for change. This does not suggest, however, that the outcome of this referendum is likely to resemble the 1975 vote, where 67% of voters endorsed remaining in the EEC. The 1975 referendum was held in a fundamentally different context, not least given the fact that the UK at the time was economically weak and the EEC was seen as a "lifeboat" that might help the sinking ship. Today the British economy is seen as far more stable, whereas the EU has been marred by multiple crises.

Finally, it would be a mistake to think that voters care only, or even primarily, about the EU when they cast their vote in EU referendums. Referendums are potentially an opportunity for voters to express their dissatisfaction with the political establishment, and with the government in particular. This is why referendums held during the midterm of the electoral cycle, when governments are often relatively unpopular, are more likely to end in defeat. Such protest voting is especially common when the campaign is less intense and citizens feel less is at stake.

### 3.b. Public opinion and the Brexit campaign

Looking at the development in vote intentions ahead of the upcoming referendum on UK membership of the

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EU, it is tempting to conclude that the campaign makes no real difference. The "EU Referendum Poll of Polls", compiled by Professor John Curtice, shows remarkably little movement in aggregate public opinion between October 2015 and April 2016. At the time of the Hearing, the race was too close to call, with the Remain side slightly in the lead in telephone polls and the Leave side ahead in most online polls.

As in other EU referendums, the campaign is thus likely to be decisive in two ways: first, in terms of persuading voters what the referendum is about and second, in each side's ability to mobilise their supporters to turn out.

When it comes to "framing" the question, the central challenge for Remain and Leave sides is to shape the issues that will matter when people cast their vote. The Remain side emphasises the disruption that Brexit would cause to the British economy ("a leap in the dark"). The Leave side, in contrast, highlights the threat to national identity and sovereignty posed by the EU and immigration ("take back control"). Research evidence shows that

the so-called “losers” of globalisation, those with lower levels of education and working class occupation, are more likely to be opposed to the EU, whereas the “winners” of globalisation – e.g. highly educated professionals – are much more favourably disposed. For those who say they will vote to stay in the EU, the argument that we will be worse off economically if we leave the EU generally carries greater weight than for those who intend to vote to leave. Yet the losers of globalisation face a dilemma: on the one hand they are generally more critical of the EU and more concerned about immigration, but on the other hand they have the most to lose financially if a Brexit vote causes economic disruption, given their frequently more vulnerable position in the labour market. A focus on economic, rather than cultural or political arguments, is thus likely to boost the Remain side.

Referendum campaigns work not only by persuading voters which issues are the most important, but also by mobilising people to vote. Evidence from Irish EU referendums has shown that voters are very similar to non-voters when it comes to vote intention; in other words, turnout should not make a great deal of difference. Yet this could be different in the Brexit referendum. Survey evidence from YouGov and other polling organisations has shown that individuals who oppose membership are more likely to vote than those who want Britain to remain in the EU. Moreover, older Britons are significantly more Eurosceptic than younger voters, and we know from general elections that

age matters to turnout, since the young are much less likely to turn out. The experience of past referendums suggests that limited campaigning by the main opposition party often contributes to a defeat for the government. The efforts (or lack thereof) of the Labour Party in mobilising its supporters in the British referendum could thus be decisive. A lacklustre campaign with low turnout is thus likely to benefit the Leave camp, whereas a high-intensity campaign leading to high turnout will more likely boost the Remain side.





### 3.c The public mandate in the event of a Brexit or Remain vote

What democratic mandate will voters ultimately provide to the UK Government in the event of a Brexit or a Remain vote? The consensus among the experts that took part in this Hearing was that a majority in favour of Leave, even a relatively small majority, would force the Government to start British exit negotiations. Failure of the government to do so would undoubtedly cause a public uproar, not least since the Prime Minister has made it clear that a Leave vote really means Brexit. Leave campaigners, including those within his own party, would make sure to hold him to that promise. The consequence of a Leave-vote would therefore be that the UK government would invoke Article 50 of the Lisbon Treaty, which sets out a procedure when an EU member declares its intention to leave. Negotiations would then take place between the UK and the rest of the EU to determine the terms of departure. These would need to be completed within two years (at which point the UK's EU membership would automatically cease). However, while a Leave vote would most likely mean that the UK would start negotiating its exit from the EU, it is far less clear that a vote provides the Government with a specific mandate for the actual terms of departure. There is no consensus in the Leave camp about Britain's relationship with the EU post-Brexit (e.g. in terms of links with the Single European Market), and voters equally have diverse views on this issue. Hence, the content of these negotiations

are likely to be informed more by the UK negotiating team, and the deal proposed by the remaining EU members, than the referendum itself.

In the event of a Remain majority in the referendum, our experts also agreed that it was highly unlikely that this would "settle" the European question in Britain for decades to come and thus provide much-needed democratic legitimacy to Britain's membership of the EU. The forces in British politics that wish to see the end of British membership are not likely to disappear simply owing to a Remain vote. In fact, such forces may even have been emboldened by the referendum campaign, as was evident in the case of the Scottish referendum. The issue of Scottish independence is still very much on the table, despite the vote against independence in 2014 - by a margin of 55-45. Hence, the debate on Britain's place within the EU is likely to continue regardless, and there may even be calls for a further referendum on EU membership in the foreseeable future. This will in part be influenced by the size of any majority for the Remain side. It looks unlikely, however, that the Remain-side can replicate the resounding victory of the yes-camp in the 1975 referendum.

## 4. The Role of National Parliaments in the EU

The second part of the discussion in this Hearing evaluated the potential of national parliaments to make the EU more democratic. The UK government presented its decision to hold an EU membership referendum as a reaction to growing Euroscepticism in the British public. Much of this Euroscepticism stems from discontent with the level of influence people feel they have on the direction of the EU agenda and the content of its policies. To this effect, a further increase in the standing of national parliaments in the EU is an important element of the 'New Settlement for the UK in the European Union', which the EU government agreed in February 2016.

### 4.a National parliaments as the answer to greater legitimacy in EU politics?

The idea of giving national parliaments a more important role in EU policy-making is not new. National parliaments' support is, after all, the key to democratic legitimacy of governments' actions at home and abroad. But many governments have seen the involvement of parliaments as an unmanageable and unwelcome constraint when negotiating compromises in Brussels. Thus, as calls for greater democratic accountability and responsiveness in EU politics continued to grow over the years, the response from EU institutions and national governments was instead to grant greater powers to the European Parliament, with only marginal changes to the role of national parliaments. Instead the Commission Hearing concluded

national parliaments in a number of member states were side-lined when it came to EU affairs.

Yet, the desire in recent years to bring back powers to national capitals has meant growing pressure on governments to grant national parliaments more powers as a means of enhancing the accountability and legitimacy of EU politics. The German Bundestag, a prime example, has been particularly active. Thus, the UK's agreement on national parliaments may be merely the start of a process whereby national parliaments assert themselves more formally and more frequently vis-à-vis their governments. As pressure mounts to find solutions to Europe's refugee situation and Eurozone governance problems, this could rapidly become the norm. Governments thus have a collective interest in showing their parliamentarians that parliamentary concerns and priorities are taken into account.

There is, however, considerable national variation in the scrutiny powers of parliaments and their practical application throughout the EU. A frequently discussed model of successful parliamentary scrutiny arrangements is the Danish *Folketing*, which follows a mandating system. The Danish government has to gain a *priori* approval of the European Affairs Committee before being able to agree on an issue in the EU. Importantly, in contrast to the UK system and many other countries' scrutiny procedures, the Danish model considers EU affairs part of domestic affairs rather than as a branch of foreign policy. The application of an *ex ante* scrutiny

system integrated into the domestic realm of politics has reportedly had a positive impact on the implementation of EU legal acts in the Danish case.

But the jury is still out when it comes to the kind of powers that national parliaments generally should enjoy, and on whether the Danish model is one to follow for all member states. Whether parliaments should have consultative powers, information rights, amendment rights or a direct say on government positions in EU affairs is a matter of political conviction. It is also, to some extent, dependent on the parliamentary system in place (whether multi-party; occurrence of single-, coalition- or minority governments, etc.). Nevertheless, a relevant lesson for the UK could be the 'mainstreaming' of EU policies from the European Affairs Committees towards sectoral committees with additional technical expertise.

Recent evidence from comparative research was also presented at the Hearing, showing how national parliaments are key to communicating European Union affairs to citizens by serving as arenas in which policies can be criticised, defended and justified. Indeed, national parliaments seem to fulfil this role rather well, with 20-30% debates being held on European issues. Perhaps surprisingly, in the UK 30% of Parliament's plenary debates between 2008 and 2012 entailed a strong EU dimension – far more than in Germany and slightly more than in Austria. These debates tend to centre around the issue areas of budgetary and

financial affairs, followed by justice and home affairs, and are often initiated by the opposition.

It remains questionable, however, whether the legitimacy of the EU in the eyes of the voters is really anchored in the role of national parliaments in policy-making, or whether – perhaps more likely – other factors are more decisive. Indeed, not all groups in society find their priorities better represented through their national parliament than through other channels of representation at the EU level, such as the European Parliament and their national government. Also, while the EU is slightly more heterogeneous in terms of the distribution of preferences among its population than the average member state, the risk of producing permanent minorities is lower. Interestingly, for the UK the distribution of citizens' economic preference on a left-right scale is more similar to the European average than for any other member state.

One may also ask how important national parliaments' scrutiny of governments in EU affairs really is, and whether it has any real impact on policies and governmental behaviour. Evidence shows that governments controlled by 'strong' parliaments are more likely to vote against policy proposals in the Council and to voice their disagreement when negotiating and adopting policies. The domestic strength of parliaments in EU affairs thus seems to have an impact on the behaviour of governments – a significant finding regarding the potential of national parliaments to link domestic

and European debates and policy-making. Of course, some question whether this is always desirable. Our experts voiced considerable disagreement regarding national parliaments' role in addressing the democratic deficit of the European Union.

#### **4.b. The 'New Settlement' for the UK and the role of national parliaments**

A key point in David Cameron's agreement with his EU partners for an enhanced role for the national parliaments is the proposal for a so-called 'red card' system. The system effectively forces the Commission to withdraw a legislative proposal if 55% of national parliaments agree that the proposed legislation violates the principal of subsidiarity. However, the consensus view is that the practical application of this new measure is likely to be rather small. Research suggests that the red card procedure would have made a difference only in 9 out of 703 votes in the Council of Ministers since July 2009, the equivalent of 1.3% of cases. Moreover, the related 'yellow card' and 'orange card' procedures already introduced in Protocol 2 of the Lisbon Treaty in 2009 - but less binding - have been used very rarely (twice in the case of the yellow card and not even once in the case of the orange card), despite having a lower threshold (one-third and half of parliaments respectively). The impact of the 'New Settlement' on the role of national parliaments in the EU is thus likely to be very limited. The only outcome of some significance in this respect is the extended time period in which

national parliaments may submit reasoned opinions for the red card procedure (twelve instead of eight weeks for the yellow and orange card procedures).

#### **4.c Challenges and opportunities for Parliaments in the event of Brexit and Remain**

Despite the lack of substantial increase in the powers of national parliaments entailed in the compromise agreement, there is general agreement that the deal sends an important political signal. National parliaments are likely to enhance their political standing in EU affairs in their respective domestic contexts; ample evidence exists to suggest such a trend. Nevertheless, the consequence for national parliaments of either a vote for 'Brexit' or a vote to 'Remain' are not at all clear at this point, and developments are likely to unfold over an extended period. Both outcomes only indicate the beginning of a rather long and uncertain process of change for Parliament, and the exact mandate for the government in both cases is far from clear.

Consensus emerged at the Expert Hearing that in case of 'Brexit', the British Parliament would still have to concern itself with the democratic control of whatever relationship the UK will negotiate with the rest of the EU. Similarly, relations and regular contacts with other national parliaments in Europe and the European Parliament would continue to exist. Importantly, the lengthy negotiation process would be accompanied by drawn-out attempts to disentangle European and British law. European affairs

would thus remain high on the agenda of both UK Houses of Parliament for a long time to come.

However, it was also argued that 'Brexit' might arguably even have a detrimental impact on democratic legitimacy and parliamentary sovereignty in the UK context. Free trade agreements as secured by the European Economic Area (EEA) countries and Switzerland are often highly technical in nature. Their negotiation, implementation and oversight would thus most likely be managed by civil servants with relevant expertise and 'behind closed doors'. Indeed, Parliament might find itself further isolated from matters relating to Britain's relationship with the rest of Europe than is currently the case. At the same time, the ongoing debate about devolution of powers to the regions, and likely pressure for a second referendum on Scottish independence, would also raise questions of Parliament's standing and powers. Several of our experts suggested it was hence an irony to call the 'Brexit' option a 'repatriation of powers' or 'enhancement of sovereignty' if Parliament ends up side-lined from both top (in renegotiations with EU partners) and below (in devolution to the regions).

By contrast, a vote to 'Remain' might lead to a Status Quo Plus – albeit more due to the existing opt-outs rather than the new 'red card' provisions. In terms of parliamentary deliberation, 'systemic' debates on the merits of EU membership might cease and leave more room for policy oriented debates. Yet, some participants at the Hearing doubted that a vote to Remain

the role and potential of further national parliamentary enhancement is highly dependent on domestic political context

would result in an end to fundamental political contestation on Britain's relationship with the rest of Europe in the plenaries of the Houses of Parliament.

Many remained sceptical of the potential of national parliaments – collectively, as institutions – to foster democratic legitimacy in the EU, terming this a 'fantasy belief'. Political opportunity structures, not least in the UK, are simply not conducive to such a role, some would argue. Moreover, different notions of 'sovereignty' are reflected in the debates across countries. Whereas in some member states, and particularly in the UK, EU membership may be seen as a threat to parliamentary sovereignty, in other countries, such as Denmark, EU membership may be considered sovereignty-enhancing.

Overall, the LSE Commission Hearing emphasised that the role and potential of further national parliamentary enhancement is highly dependent on domestic political context. Nonetheless, the UK referendum has brought the role of national parliaments in EU affairs to the centre of political attention. This is likely to remain for some time to come, regardless of the outcome of the referendum on June 23rd.

## 5. A Democratic Mandate for the future of Britain in Europe?

The conclusion of the Hearing was that the UK's referendum does not provide a clear mandate for the UK government to pursue a defined path for the UK in Europe, regardless of whether the outcome is to stay in or leave the European Union. Uncertainty surrounds the political agenda of the EU itself, as the refugee crisis and Eurozone situation look set to reshape EU politics altogether in the foreseeable future. For the UK, much will therefore depend on the interpretation the government makes in reaction to the referendum result when it presents its case after the referendum. Three scenarios are relevant in this respect:

The first scenario is one where voters support the UK's continued membership of the EU with a large majority and with a high turnout. Here, the result will likely be presented as a victory for the government, suggesting strong support for its pursuit of a 'special status' for the UK in the EU and a general 'vote of confidence'.

As pressure eases in this context, government will find itself with a large room for manoeuvre on the degree to which it wishes to emphasise its special status as an EU member, or whether it will seek to engage as a leader in the EU and Europe. Momentum can also be expected centrally for Parliament. It is likely to seek ways to enhance its domestic role in European affairs.

The House of Commons European Affairs Scrutiny Committee and the House of Lords EU Select Committee have already proposed changes to that effect. But the government will have a freer hand both

when answering Parliament and when negotiating in Brussels.

A second scenario is where the result is a narrow margin of support for 'remain'. Again, the government can present this as a win. It may be argued to reflect a pro-, yet critical, take on EU membership.

The accuracy of this interpretation may be questioned of course, since the results are not based on a spectrum of opinion about EU membership, but rather on a binary In/Out question. Pressure will nevertheless remain on the government to assert the UK's interests and its 'special status' in the EU in this scenario, and, as discussed above, Parliament is likely to assert itself through interpretation of the articles on the enhanced role of national parliaments including in 'the New Settlement for the UK in the EU'.

The third scenario is the rejection of EU membership by UK voters. As discussed above, consensus among the experts was that a Brexit vote, even with low turnout, would trigger the UK's exit from the EU. But beyond the mandate to exit the EU, the referendum would only provide limited guidance as to the sort of settlement to negotiate with Europe. Moreover, the UK Parliament would likely have a limited role in these renegotiations. As mentioned, the negotiation process would be accompanied by a lengthy and highly technical process to disentangle elements of European and British law and secure new agreements. The negotiation, implementation and oversight would thus most likely be carried out by civil servants with relevant expertise and 'behind closed doors'. In this

way, Parliament could find itself further isolated from matters relating to Britain's relationship with the rest of Europe than is currently the case. That said, many have argued that a repatriation of powers may result in a more autonomous Parliament in the longer run, where decisions to enter into cooperation with EU partners may be taken on a case-by-case basis, and with consideration of the depth and scope of individual policy collaborations.

In sum, the referendum on 23 June will not specify a mandate for the government to pursue one particular political path for the UK in the changing European political landscape. Much uncertainty surrounds future scenarios and only one thing is clear: whether UK voters decide for Brexit or Remain, EU politics will continue to affect the British public's day-to-day lives and is likely to dominate the agenda for the UK parliament for quite some time.

<b>Referendum on the United Kingdom's membership of the European Union</b>	
<b>Vote only once</b> by putting a cross <input type="checkbox" value="X"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
<b>Remain a member of the European Union</b>	<input type="checkbox"/>
<b>Leave the European Union</b>	<input type="checkbox"/>

## Participants List

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