



The EU Referendum and the UK's Environment: What are the implications for democracy?

Provocation

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May 2016

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Overview

On June 23rd the UK's citizens are being asked to make a historic decision about their future relationship with the European Union. The debate so far has been [surprisingly quiet](#) on the issue of the environment although the question of democracy, typically understood as parliamentary sovereignty, has been rather more centre stage. So what prospects does the referendum raise for the UK's environment and for democratic participation in decision-making? We consider these questions by first reviewing the EU's decision-making structures before turning to three broad post-referendum scenarios.

How democratic is the EU and does it matter?

The EU is often accused of being opaque, unaccountable and far removed from European citizens. This observation raises the question of whether an exit from the EU would bring greater accountability and transparency to decision-making. Moreover, would such a move be preferable from an environmental perspective?

One advantage of EU decision-making is that it is to some degree insulated from domestic political pressures: a deliberate design choice by Jean Monnet, a French economist and diplomat considered to be one of the founding fathers of the EU. He sought to develop a technocracy in the Commission (originally known as the High Authority) that was vested with supra-national decision-making authority, thus freeing it from the vagaries of short-term national politics. The Commission would then be able to develop policies that served the wider European political and economic interest. The Council of Ministers and later European Parliament were designed to balance the authority of the Commission and provide democratic accountability.

The European Parliament is the only directly elected EU institution and provides the key vehicle for democratic accountability. European elections are run on the basis of proportional representation (PR) across all member states. In the UK, each citizen's vote counts [for more in European elections](#) than it does in the majoritarian local and national elections. The United Kingdom Independence Party (UKIP) and the Green Party, for example, gained millions of votes in the [2015 General Election](#) but have only one MP each compared to 22 [Members of the European Parliament \(MEPs\)](#) for UKIP and 3 MEPs for the Greens.

Monnet's model of delegating authority to an independent body to protect it from (party) political pressures is now common place: [think of the Bank of England's role in monetary policy](#), the now defunct [Sustainable Development Commission](#), or indeed the current role of the UK's [Climate Change Committee](#). In all these cases it has been recognised that it may be advantageous to insulate important policies from wider political pressures, subject to democratic checks and balances. In the case of climate change, there are clear benefits that accrue from long-term policy planning that is to some degree protected from partisan conflict.

The US provides a cautionary case of how environmental and climate politics can become a political football, with resultant negative impacts on long term-planning. However, a clear drawback of the EU's institutional structures is that they can lead to policies with limited popular support at the national level. Since 2004, particularly for states that are recipients of bail-out funding, there has been some backlash against having to 'take' policy on which national policy-makers have had little say and for which there is limited domestic popular support. It is unsurprising that a key element of the referendum debates is the relative sufficiency of the EU's democratic checks and balances. There is a vast [academic literature](#) on the EU's democratic deficit. However, the manifestation of those debates within the referendum campaign has focused primarily on the ability of the UK's parliament to scrutinise EU policy and seek to [veto it if possible](#).

Most EU legislation relating to the environment is adopted by the 'ordinary legislative procedure', under which the Commission proposes policy that is then negotiated and jointly adopted by the Council (representing the 28 member state governments) and the European Parliament. Environmental policies relating to fiscal matters, energy supply and land use planning are subject to a different decision-making process that requires unanimity voting in the Council. There is currently scope for the UK parliament to use the so-called [yellow or orange card](#) procedures. These allow national parliaments across the EU to raise concerns about policy proposals that could be better regulated at national or regional level. However, these processes require cooperation with other national parliaments – 9 in the case of the yellow card, 14 for the orange. The yellow card has only been used since its inception in 2009, the orange card never.

In his EU renegotiation concluded in February 2016 David Cameron, the UK Prime Minister, had [four key objectives](#) – reducing EU internal migration; greater competitiveness of EU action; guaranteed rights for non-Eurozone countries; and Britain's exclusion from the 'ever closer Union' objective together with increased rights for national parliaments. On the last item, David Cameron obtained [a new red card](#), which would allow 55 per cent of national parliaments to block proposed EU legislation. This proposal would require even greater cooperation across EU parliaments but is expected to have [very limited impact](#) on decision-making.

What about ordinary citizens? The scope for UK (or indeed any EU) citizens to engage in decision-making is limited, although growing. The [European Citizens' Initiative](#) allows one million European citizens to sign a petition asking the Commission to consider legislating on certain issues (for example, [on genetically-modified organisms](#)). Many European policies include a consultation phase before the proposal is finalised. For example, the last reform of the Common Agricultural Policy received [5500 contributions](#) from across the EU. Once a proposal is formally adopted by the European Commission, there is limited scope for citizen involvement in the legislative process, although the European Parliament's [rejection of the Anti-Counterfeiting Trade Agreement Treaty \(ACTA\)](#) in 2012 came after strong street protests and online petitions. Nevertheless, whilst the EU

treaties institutionalise the participation as well as the subsidiarity (allowing for policy development at the most appropriate level) principles their operationalisation remains limited.

What then will change post-referendum? Many [scenarios](#) have been identified. In our [expert review](#) of EU-UK environmental relations we concentrate on just three: i) remain; ii) the Norwegian option where the UK leaves the EU but joins the European Economic Area (EEA) – the 'Brexit' option closest to the *status quo* iii) the free trade option where the UK leaves the EU and pursues a new trade relationship with the EU and other states – the 'Brexit' option furthest away from the *status quo*.

Remain

Under the 'remain' scenario it seems likely that much will be the same. The UK will continue to have representation in the Council and Parliament, it will continue to enjoy the right to adopt stronger environmental standards, under the so-called 'environmental guarantee article' (Treaty on the European Union (TEU), Article 193). The red card procedure raises the possibility of increased democratic accountability if the UK parliament manages to secure sufficient support from other parliaments across the EU to block legislation. But it should be noted that the red card procedure cuts both ways. It may therefore result in legislation the UK favours being blocked by other national parliaments.

Two current areas of concern for the environmental movement are the adoption of the Trans-Atlantic Trade and Investment Partnership agreement (TTIP) and attempts to roll back habitats and birds legislation at the European level. TTIP has been heavily criticised from a wide range of actors for multiple reasons. The risk it poses to domestic and EU [environmental legislation](#) is high up the list of concerns, since they may be seen as hindering competitiveness. Ironically, it appears that if we stay in the EU we are more likely to see TTIP blocked than if we leave. The [French](#) and [Greek](#) governments have expressed strong opposition, whereas our current government has lobbied in its favour. Germany has seen [massive public protests](#) against the deal, echoing protests across Germany against [ACTA in 2012](#). To be finalised, TTIP would need to be ratified both by the European Parliament and by all national parliaments, as well as the US Congress. On habitats and birds, the environmental movement obtained more than [half a million signatures](#) from citizens across Europe to defend these pieces of legislation. The forthcoming policy proposals will be heavily scrutinised. Their content will give some indication of how sensitive to popular pressure the European Commission is on nature legislation.

The Norwegian Option

If the UK votes to leave, it will have two years under Article 50 of the Treaty to negotiate its exit. One option is to negotiate membership of EFTA (European Free Trade Association) and from there to become a member of the EEA like Norway. The Norwegian option has been criticised as leading to a 'democracy by fax' (Hovden 2004)¹: most EU rules would continue to apply in the UK, but the UK Government would lose its seat at the decision-making table. [This is why the Norwegian premier advised David Cameron against leaving the EU](#).

When it comes to the environment, the picture is more complex. A number of EU environmental rules would cease to apply: notably the rules on bathing water, habitats and birds. This means future UK governments would be able to decide to strengthen (a right already enjoyed) or weaken regulation on these issues. Finally, the EU Common Agricultural and Common Fisheries Policies

¹ Hovden, E. (2004) 'Norway: top down Europeanisation by fax' in A. Jordan and D. Liefferink (2004) *Environmental Policy in Europe: The Europeanization of National Environmental Policy*, London: Routledge, pp.154-171.

would cease to apply. As agriculture is a devolved matter in the UK, the Norwegian option raises the prospect of devolved administrations across the UK gaining the opportunity to develop their own, potentially diverging, agricultural policies.

The Free Trade Option

Under the free trade option, many EU rules would cease to apply in the UK – but not all. On most policies, including the environment, there would be greater apparent parliamentary sovereignty. Yet this increase in *de jure* (legally defined) sovereignty, may carry important *de facto* (in reality) limitations. Not only would the UK still be bound by its international commitments, it would also continue to apply many EU rules, notably product standards. Indeed, the size and strength of the EU Single Market means EU product standards tend to be adopted [across the world](#), even in non-EU countries. This is, for example, the case for chemicals' regulations and many rules around handling of hazardous waste. Beyond the environment sector, this is also true of other regulations such as anti-trust rules. The free trade option relies on the UK government striking a number of trade deals with different nations or groups of nations. This prospect raises several questions about the UK's ability to negotiate these deals (for the last forty years these negotiations have been led by the EU) and the content of favoured trade deals. As noted above, the current government has been a strong supporter of TTIP, despite growing public worries. This highlights the complicated democratic credentials of trade negotiations: would UK-led trade negotiations receive more, or less public attention than the on-going TTIP negotiations? Would UK negotiators listen to public disquiet more or less than EU negotiators?

Conclusion

Having reviewed the post-referendum options from a democratic perspective, the Norwegian option is the [weakest](#) from a democratic point of view, since it would see the UK become a taker of policy with little opportunity to shape its content. The main democratic benefits under the Norwegian option stem from the potential devolution of agricultural policy to regional levels, but the environmental implications of such a move are unclear. Under the free trade option, there is an opportunity for greater *de jure* input into policy. However, as with the Norwegian option, the UK will become a taker of EU policy. In order to access the Single European Market many product standards will have to remain in place. It is also uncertain how much autonomy the UK will enjoy when seeking to negotiate trade relationships, or the extent to which popular opposition to such agreements will inform their content. Under the remain option the UK has scope to push ahead with stronger domestic environmental standards, but limited ability to roll them back – potentially advantageous from an environmental perspective.

The debates on Brexit and EU environmental policy consequently serve to highlight a central tension that environmentally concerned politicians and practitioners face, namely how do we balance the desire for democratic participation in decision-making, against the need to protect the environment with stable long term rules. In many respects the focus of the debates on democracy as national or parliamentary sovereignty miss this important point. They assume the *de jure* increase in parliamentary sovereignty increases democracy. For many citizens, however, it simply involves transferring power from one set of opaque and unaccountable institutions to another. The UK parliament is, for many, as remote and unrepresentative as the EU. The question on which we *should* be focusing, is how to empower local communities to be involved in decisions that matter to them, but in a way that allows the environment to remain protected. The question is less one of who governs, and more one of *how* should they govern. National sovereignty is essentially a red herring that offers little in the way of genuine democratisation of environmental (or any other) policy area.

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