

## The EU Referendum & Northern Ireland:

### Ask the Experts

**7 June 2016, Queen's University Belfast, 18:30 – 20:00, The Canada Room**

On 7 June 2016, Queen's University Belfast organised a debate in partnership with the ESRC's initiative on [The UK in a Changing Europe](#) ahead of the upcoming referendum on the UK's membership of the European Union (EU). The 'town hall' debate was open to the public and brought together a distinguished group of five EU experts in European Union law and politics to discuss key issues in the EU referendum debate. The panel was chaired by Declan Lawn of the BBC. The audience, containing students, civil servants, academics and members of the general public, was encouraged to put their most pressing questions to the experts and they did.

Many salient questions were raised over the course of 90 minutes. These included: What is Article 50 TEU, who can invoke it and what happens once it has been invoked? What would happen to the huge body of EU law if the UK decided to leave? What would the UK's withdrawal from the EU mean for global politics? What would be the consequences of a possible 'leave' vote for the UK and for Northern Ireland? What are the most important issues for Northern Ireland in case of a leave vote? Should we trust economic forecasts and modelling? Was there scaremongering in the 'remain' campaign? What would happen with the EU law? Would we expect to see a move towards greater internal reform within the EU if the UK voted to remain or leave? How much would immigration policy be expected to change following a 'leave' vote? What would be the exact nature of the border between Northern Ireland and the Republic of Ireland in the event of a 'Brexit'? How would the UK's withdrawal impact security? What is the opinion in other Member States of the UK's referendum on EU membership?

The members of the panel were:



[Dr Angus Armstrong](#) is Principal Research Fellow at the National Institute of Economic and Social Research.

Dr Armstrong discussed what should be expected from an economic perspective if Article 50 were triggered, following a vote to 'leave'. Firstly, he noted that there would probably be a leadership change in Prime Minister. The negotiation period after Article 50 had been triggered would, he suggested, be difficult. When there is a high uncertainty, businesses stop investing and this has knock-on effects upon the wider economy and on jobs and wages. Furthermore, he noted that seven out of eight credible forecasts predicted a permanent loss of some £2000 per year per household, with only one predicting an increase of £900 per year per household. One of the

challenges facing both the UK and the EU would be to make the negotiations as painless as possible and to try and maintain current arrangements where possible. With regard to the question on why should the electorate trust the Treasury's financial predictions, Dr Armstrong's answer was that all predictions needed to be treated with caution as economic forecasts involve assumptions that are subject to change. The unknown with any vote for Brexit would centre on the nature of whatever new relationship was attained and developed between the UK and the EU.

[Catherine Barnard](#) is Professor of European Law at Cambridge University.

Professor Barnard discussed what would possibly happen if the UK decided to leave the EU. Professor Barnard admitted that much was yet unclear, but what is known was the formal procedure to withdraw from the EU. If there were a leave vote, then Article 50 - introduced with the Lisbon Treaty in 2009 - would be invoked. The question of who is empowered to invoke Article 50 and exactly when is open to discussion. It was assumed here that the Prime Minister would notify the EU27 about the UK's intention to withdraw, commencing the start of negotiations. From that moment on, debate needs to start about what happens to EU grants and monies from the Structural Funds, EU farm subsidies, the Erasmus programs and a range of other issues need to be sorted out. Article 50 does not indicate what the future relations between the EU and a former EU state would look like. The negotiations would last for two years (but this period could be extended if there is agreement among the EU27 to do so. It is anticipated that the negotiations process on an exit would take more than 2 years. There are a number of different scenarios of a new UK/EU relationship after a 'Brexit'. One of the options is the 'Norway' (an EEA) option. This would mean staying in the single market and applying the current and new EU law, but the country would have no say in any new law and will have to continue paying into the EU budget. Customs controls would also be necessary in this instance as the EEA is not part of the EU Customs Union. Another option centres on a free trade agreement which is basically about goods and possibly some services but no free movement of persons. The example here is the 'Comprehensive Economic Trade Agreement' (CETA) between the EU and Canada. The third possibility is none of the above and reliance on international law or WTO agreements. This model means that the EU can levy customs duties on good coming from the UK and the UK can do the same for the goods coming from the EU. The tariffs on food, for instance, would be some 15%. Suggestions from the 'Leave' campaign that EU can be divided in three parts - 'stupid' laws which would be repealed, amendable which would be amended and good laws which will be kept in force simply understates how long it might take to deem which EU legislation falls under which category. It could take years to determine.



[Anand Menon](#) is Professor of European Politics and Foreign Affairs at Kings College London.

Professor Menon discussed what the leave vote would mean for global geopolitics. He stressed that it is not known who would be governing the UK and negotiating with the EU if there were a vote to leave. Could David Cameron expect to remain Prime Minister if the UK voted to leave the EU? Was there a possibility that Boris Johnson could be the next Prime Minister? Other important questions to consider include the exact role and involvement of the Parliament in triggering Article 50. In particular, should it legislate on this? Should there be a general election? Professor Menon argued that what definitely seemed clear was that 'Brexit' would usher in a period of political uncertainty, about the direction ahead, the actual negotiations (which would exceed beyond two years)

and the reaction of the EU27 who might push for a quicker deal. With France and Germany holding national elections next year there may be a need to limit such uncertainty. As to the alleged

scaremongering used by the 'Remain' campaign, Professor Menon pointed out that this was the usual way that politics works. Scaring people is usually more effective than hope or aspirations. There should be no surprise that both campaigns are doing this. The second thing is that there is no certainty about what might happen in the future and no-one can tell you this. There are many unknowns ahead. However, there should be a distinction between two stages: the immediate uncertainty after any 'leave' vote and the post-uncertainty period, although it is unknown what happens in between these two stages. On the question of security Professor Menon argued that any UK withdrawal from the EU would have a little impact given that the country is the strongest player in the EU when it comes to Foreign and security policy. It is inconceivable, he noted, that other Member States might not want to cooperate if the UK left the EU. Yet, territorial tensions within the UK itself cannot be ignored if, for instance, England votes to leave the EU and Scotland votes to remain. Also it seems that most of England, apart from London and metropolitan cities such as Manchester, would vote leave. So the politics would definitely be subject to change.

[Dagmar Schiek](#) is Professor of Law at Queen's University Belfast and Jean Monnet ad personam Chair for EU Law and Politics

Professor Schiek discussed the period after the possible leave vote, admitting that it was difficult to envisage everything that could occur. However, she warned that people in academia, as for instance at Queen's University Belfast, might re-consider their current positions if academic work in their fields of specialization would suffer from working in a non-EU country. According to Professor Schiek, the post-leave period would be a good time for lawyers (and economists) who would be needed to address a range of significant issues for people working over the Irish border; for people whose children go to universities in the Irish Republic and other EU member states; for people who spend part of their lives in another EU country; and for people whose parents are retired in Spain. It is to be expected that EU lawyers specialising in social security law and labour law would be in very high demand. As trade agreements would also need to be negotiated, those involved in this particular field would also be much sought after. All these fields would suffer from a prolonged period of uncertainty while a new relationship of the UK with the rest of the EU would be negotiated. Migration will emerge as another pertinent theme. With regard to the question as to whether there would be difference between EU immigrants who arrived in the EU before the referendum and those arriving after the referendum, Professor Schiek noted that that would depend on the withdrawal agreement, and as such be uncertain. However, the UK might have an interest in securing the citizenship rights of its own citizens living in other Member States, which would require some compromises. Accordingly, it is likely that an agreement is made to secure rights of EU citizens who arrived in the UK before it withdraws. However, there are questions about how many could expect to come after a UK departure from the EU. Professor Schiek suggested that one of the options to distinguish between EU migrants was to ask for citizenship cards which could testify when EU citizens have actually migrated to the UK but this would not be a straightforward exercise.





[Dr Lee McGowan](#) is Senior Lecturer in European Politics at Queen's University Belfast

Dr McGowan focused his attention on the issue of the referendum on EU membership in Northern Ireland. According to Dr McGowan, one of the main questions to consider is what will be the response of the Northern Ireland Executive if there is a vote to leave. Does it have a plan? Has it identified priorities to discuss, promote and defend with Whitehall? Would the Executive be part of the UK negotiations? There are many areas of common concern for both Northern Ireland and the UK as a whole but there are some differences. Agriculture is one but another centres on the 299 mile land border between Northern Ireland and the Republic of Ireland. This is the UK's only land border with another EU member state. Dr McGowan discussed the nature of any future border between Northern Ireland and

the Republic of Ireland following a vote to leave the EU. He

stressed that this was a highly sensitive issue for many people in Northern Ireland and is a theme that has rarely featured as part of the wider UK debate. What does a post Brexit border look like on the island of Ireland? Is the nature of the border going to stay same as it currently is or is it going to be different? Can we talk of hard borders and soft borders? According to Dr McGowan, the outcome of the negotiations between the UK and the EU will ultimately determine the nature of the border. He stressed that it would not be determined by a bilateral treaty between the UK and Ireland but needed agreement between the UK and the EU 27. It was suggested that Ireland could possibly play a key role in seeking to secure a 'special status' for the border. Another intriguing question raised by Dr McGowan included the uncertainty of what constituted a winning margin for either the 'remain' or 'leave' camps. It is also uncertain what a leave vote would mean for the Northern Ireland where people, according to the polls, in this region of the UK to vote in favour of remaining, and what implications this might have for the two communities in Northern Ireland and the peace process?

## Other questions

Other questions were jointly addressed by speakers.

With regard to the continued application of EU law, **Professor Schiek** recognised that much depended on regulatory responses by the UK. There could be legislation providing for the continued application of EU legislation even after the withdrawal for an interim period. If no such legislation would be adopted, EU legislation would cease to apply. For regulations, which are binding on all EU Member States, this would mean that they would no longer apply. As a result – to give just one example – cross-border social and security claims would no longer have a legal base. The situation for Directives is different, as these have been implemented into national law. Thus, if the national legislation is not repealed, the practical effect of the EU directive lives on. . As noted by Professor Schiek, producers in non-EU countries wanting to export to the EU often choose to comply with standards that are legally binding in the EU, because their products might not be tradeable in the EU, irrespective of formal legal obligations. According to **Professor Menon**, the issue would be of interest for many companies but not for all as those companies which do not export to the EU would no longer have to comply with the relevant directives anymore. Another question centred on how far the EU was likely to be reformed following a 'remain vote' and if so, where was reform most needed, **Dr Armstrong** emphasised that much would depend on the size of vote and what kind of majority votes to remain. **Professor Barnard** noted that the EU needs reform of its economic and monetary union which would require amendments

of the EU treaties and this would not be easy to achieve in the short to medium term. If there is a large 'remain' vote, then David Cameron may decide to show some leadership at the EU level. The UK has been criticized that it has shown no leadership in the past five years, as for instance over the situation in the Ukraine. Also, according to **Professor Menon**, the EU needs to reform but this might not be achievable because of the need for Treaty amendment. It is less likely that David Cameron would be willing to act to reform the EU if there is a large 'remain' vote. However, as noted by Professor Menon, there would be probably a second referendum in the next decade if the result difference is close. **Professor Schiek** noted that reform is needed with regard to the economic and monetary union, but also in respect to the migration and refugees crisis. The latter could be addressed without Treaty amendments if there is a political agreement. The fact that the UK has chosen not to contribute to the solution of these problems, irrespective of withdrawal from the EU, could be seen as detrimental for the EU at large. Even if 'remain' wins, the EU will change. In particular, certain promises have been made to David Cameron in the field of free movement. This is a European Council decision of February 2016, and if nothing else, has some binding effect under international law. This particular agreement would mean that there would be less equality for people moving across the border. Other aspects of the decision refer to exempting the UK from the ever closer Union, and to the powers of the national parliament in raising the subsidiarity clause.

**Dr McGowan** noted that the EU needs reform, but also that it is important to address the question of who adopts EU laws. The public has not been sufficiently informed on this question and there is often a wildly held belief that someone is imposing the law on Member States while in reality the member state governments play a central role in EU law making. Indeed, member state fingerprints are all over the making of EU law and some 80% is co-decided by the Council representing the Member States and by the European Parliament whose members are directly elected in the Member States. On a rather different note on the application of EU law, and as specifically asked by the audience, **Professor Barnard** explained that with regard to the current EU law, there is a misconception that the UK's fishermen established in other Member States (in Spain, for instance) cannot fish. They can do this as Spanish fishermen who have established in the UK can do, Waters and fishing quotas would have to be negotiated if there is a decision to leave the EU.

With regard to the questions of immigration and whether the border with Ireland would be hardened and if so why, speakers explained a number of issues. **Dr McGowan** explained that this would depend on the arrangement that would be made between the UK and the EU. If the UK is not part of the EU or the EEA, then there would have to be some customs duty on the border. Other issue is whether the UK would be able to carry on as before having some form of bilateral agreement. The problem with that, as noted by Dr McGowan is that the UK would not be only negotiating with Dublin but also with 26 Member States because this would be an international border with the EU if the UK is neither part of the EU or the EEA. So the nature of the border would change. The common travel area between the two countries has been suspended a few times, but it is a political rather than a legal arrangement. **Professor Schiek** emphasised that if there is no free movement of people agreement in place then people who would like to travel to the EU would have to be checked and there might be visas. Borders would have to be controlled if the UK does not agree to free movement of persons which is one of the main points of concern for the leave campaign. With regard to the Common Travel Area between the two countries, Professor Schiek explained that the agreement is not a binding convention under international law, as testified by a common declaration of the parties in 2012. However, this does not mean that the common travel area is only a political arrangement, it is a set of common customs. So far the special relationship between the two countries is recognised by being mentioned in Protocol 20 of the Treaty of Lisbon. Should the UK leave the EU, a more secure legal basis would be necessary to maintain the Common Travel Area, and this would be a theme of the negotiations on the UK's withdrawal. The Republic of Ireland has interest in achieving a secure legal footing, among other things because access to the EU from Ireland is mainly via the UK. **Dr Armstrong** noted that the EU includes a customs union and while trading between Member States is as free as between two cities in one

state, everyone outside the EU is subjected to external customs tariffs. There is an EU common external tariff, which is an exclusive EU competence. Accordingly, it cannot be negotiated between London and Dublin. The question of what would happen if the UK and the EU agree to the Norway (EEA) model is an interesting one because, even though the country would be in the single market, it would be outside the customs union. Thus, border checks on goods would be needed. Some goods such as agricultural goods would be subject to tariffs. Moreover, free movement of services is not the same as with other agreements. For instance, in the recent agreement with Canada (CETA), only some services in that agreement have been included. Most services are not part of free trade agreements. **Professor Barnard** explained that it is incorrect that there are no borders, as often claimed in the media, and that people come freely to the UK as they wish. There are border controls when entering the UK from countries abroad. What is correct is that there are no restrictions on EU nationals coming to the UK. They would be checked and if there is a security reason they can be kept out. Some 2,000 EU nationals were prevented from entering the UK in 2015. The EU nationals can come for three months for any reason and after that they need to be economically active, self-employed or have enough money to stay in the UK and they have to be in that position for 5 years. It is certainly true that if there is no EU or EEA agreement the number of EU nationals coming to the UK would be much lower, but caution needs to be applied and a closer look should be made with existing statistics. In the last year more non-EU citizens came to the country than EU nationals and the UK has a full control over the non-EU nationals. The decrease of migration to tens of thousands would not happen any time soon. With regard to Ireland, there is a common travel area which precedes the EU membership of the two countries and this might have to be respected as it has shaped the relations between the two countries and their attitudes on migration. Its status is as yet not fully clear.

With regard to the question of why EU migration cannot be stopped, Professor **Menon** explained that while politically this might be possible, economic studies have shown that EU migrants contribute to the growth of the country. Their contribution in tax is much higher than what they claim in benefits. The issue of immigration, however, is a central theme for UKIP and they have been able to make political capital from parts of the UK population that have experienced high degrees of immigration. **Dr Armstrong** noted that trade has its distributional impacts. People in low paid jobs can lose from trade. Domestic policies, according to him, are the best ways to deal with migration. Migration is generally good for society, and will remain a reality in a global economy. Thus, the best way to sort out resulting problems is through domestic policies.

Finally, in response to a question on what would other Member States would think of this, **Professor Schiek** noted that there are different reactions across the EU. People from other Member States are usually more concerned with other problems in the EU rather than with the referendum. There is no doubt that many regard the referendum as a distraction from more pressing issues such as immigration, s, improving the fortunes of the economy and enhancing greater political acceptance of the EU. On the one hand there are people thinking that they Brexit is taking too much time and energy about on the other hand there are people, for instance in the Netherlands, who would like to follow the UK and hold their own referendum on EU membership,

Finally, watch coverage of the event at:

<https://www.youtube.com/watch?v=TUe8suLL-E&feature=youtu.be>