

# Political Reductionism at its Best: the EU Institutions' Response to the Brexit Referendum

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Giuseppe Martinico Di 5 Jul 2016

[Colleagues](#) have already commented upon the response of the EU institutions to the outcome of the referendum held on 23 June, stressing the rushed and [populist](#) attitude shown by the Commission and the EU Parliament, referring, for instance, to the exclusion of the UK from the “informal” meeting of the European Council held on 29 June and to the way in [which Juncker made a joke of Nigel Farage](#), asking why he was in the European Parliament after the UK vote.

However, there is another episode which is very telling, about the respect shown by the “political class” towards Art. [50 of the TEU](#) and, in general, other relevant norms to be taken into account independently from the activation of the exit procedure, like, for instance Art. 4.2 TEU demanding equal treatment of the Members States and respect of their national identity and constitutional structure.

On 28 June 2016, the European Parliament adopted a short [resolution](#) on the consequences of the UK referendum held on 23 June.

There is a passage which is based on an evident mistake therein:

*“...Warns that in order to prevent damaging uncertainty for everyone and to protect the Union’s integrity, the notification stipulated in Article 50 TEU must take place as soon as possible; **expects the UK Prime Minister to notify the outcome of the referendum to the European Council of 28-29 June 2016; this notification will launch the withdrawal procedure.**”*

As [Elliott](#) pointed out this is deeply wrong. The notification will be (if carried out) represented by a further act, whose form is still unclear as the debate among our British colleagues and experts in Constitutional law demonstrates (is it a [prerogative of the Prime Minister](#), [will a vote of the Westminster Parliament be necessary?](#) [Is it a decision for the Government but under parliamentary scrutiny?](#) [Could Scotland pose a veto on that?](#)).

One could correct me by saying that *de facto* the UK has already made its choice, that the EU has the right to protect itself against what is sometimes perceived as a sort of tactical delay. It would not be a mistake then, but simply a linguistic choice of the EP which leaves no margin to the UK. A confirmation of this could be found in the EP resolution itself reporting that EP “[will enact changes in its internal organisation to reflect the will of a majority of the citizens of the United Kingdom to withdraw from the European Union](#)”. What does this mean? Are these lines referring to the possibility of removing UK Members of the EP from some senior roles ([for instance chairmanship of committees](#))? And above all, is this, technically speaking, legal?

In spite of the fact that from a formal point of view [the UK referendum is not binding](#), in spite of the fact that the UK has not activated the procedure *ex Art. 50 TEU* and that the supranational institution [may not oblige](#) the UK to launch it, almost everybody is sure that the exit will almost certainly happen. Of course, from a political point of view it is quite clear that the chances of the UK remaining in the EU are quite low, especially for the political meaning of the vote expressed on 23 June.

At the same time, in my capacity as a professor of law, I still think that this scenario is quite deplorable and also emblematic of a certain understanding of law. Against this background, law is represented as the mere crystallisation of power relationships, nothing more.

Norms would just be technicalities, annoying obstacles standing between the political actors and their legitimate

goals.

This is profoundly wrong and dangerous: norms, especially when they are codified at a constitutional level (and the EU Treaties are the “basic constitutional charter” of the Union, as the Court of Justice has been repeating since [Les Verts](#)), are the shape of power; they are there to avoid abuses and discriminations. The EU institutions, especially the Commission and *in primis* its President, should ensure neutrality and independence. [In this sense, I do share what Komárek recently argued, that the populists are also in Brussels and Strasbourg.](#)

There are many serious issues to be clarified after the UK referendum, we are facing a situation which is both legally and politically complex (I use here complex in its etymological meaning: [complexus as interlaced](#)) since different planes are intertwined and difficult to separate and the worst service the EU can do is to simplify or even manipulate them. The confirmation of this is given by the fact that questions that may appear at first glance as an element of domestic law (who is in charge of notifying the decision to leave: the Parliament? The Prime Minister? The Government?) actually have repercussions on the activation of the withdrawal procedure, this is connected to the *renvoi* made by Art. 50 TEU to the “constitutional requirements” of its Member States. EU Treaties are very rich in norms like this, making reference to national principles (see Art. 6 TEU, many provisions contained in the Charter of Fundamental Rights of the EU). More in general, as Peers nicely pointed out, [“one does not simply withdraw from the European Union”](#), there are hard choices to be made first and we have no precedents because this procedure is brand new. This rushed and laid back type of approach taken by the EP and the Commission risks neglecting the complex nature of this crisis.

This is political reductionism at its best, an exercise of irresponsibility.

Instead of trying to construct a better Europe they seem to be more interested in attacking or even humiliating the representatives of a country which is still a Member State, showing no respect for those rules that they are supposed to defend and guarantee.

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