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# Brexit – lessons from four referenda on the European Union (EU) in Denmark

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### Abstract

From 1972 to 1993 Denmark staged four referenda on the EU. Two of them in particular hold valuable lessons for Britain seeking new terms - in June 1992 on the Treaty on European Union (Maastricht Treaty), the Danes voted “NO” with a slim majority; this was followed by another vote on the treaty in May 1993 on the Edinburgh Agreement with a “YES” vote. Joergen Oerstroem Moeller was directly involved in all four referenda and served 1989-1997 as State-Secretary in the Royal Danish Foreign Ministry. The result of a referendum may and often will be decided by policy decisions shaping the electorates’ perception long before the voting takes place. The majority votes according to instinct and intuition and is often guided by emotions. The Danish case highlights the importance of defining clearly specific exceptions, working hard to explain the case (at home and abroad), establishing good-will, and conveying that exceptions are in principle temporary and do not require treaty changes. The objectives laid out at the start of the process must be achievable. The member state in question should not manoeuvre itself into humiliating back-peddalling at the final negotiation round: if so it arouses suspicion among the electorate that it is being manipulated and deceived. During the campaign media attention will primarily focus on dissent and scepticism presenting the establishment with the tedious task of confuting accusations of all kinds. The YES camp will be pushed into the defensive by the NO camp setting the agenda. Time and effort and political capital needed to be invested for the positive outcome.

### People’s reaction faced with a referendum on the EU

In a national election political parties confront the electorate with fairly united positions, draw on the existing party machinery having proved itself in previous elections, and work on party programs supplemented by a record of how they performed in government or opposition.

A referendum is completely different. It cuts across party lines thereby undermining the effectiveness of party machinery. The majority of voters do not have a strong position – a considerable number of them can be won over by good and convincing campaigning.

People vote according to instinct and intuition or logic and reasons. Not both. Those following instinct and intuition can rarely if ever be won over by rational arguments; they do not want somebody to rock the boat and the heavier the bombardment, the more entrenched they become in the already taken belief.

Three elements coruscate defining the yes-no contest. Intuition and emotions blended with history may decide voter preferences long before the start of the campaign. Prime Minister Margaret Thatcher’s words on 30 November 1979 ‘I want my money back’ sowed the suspicion that there was something inherently wrong with the EU, operating surreptitiously to rob honest Britons of hard earned money. The way people judge influence on their daily life – prices in the

supermarket weigh heavier than military strategy, financial crises, and the global business cycle. Stories of red tape and bureaucracy are believed because few have tried 'dealing with Brussel' so they cannot counterbalance such stories with personal experiences. High power distance fuels the incentive to vote no.

The more important the issue the more likely it is that the turnout will be large and people vote according to the advice of authorities and the establishment. In 1972 the turn out in the Danish referendum on joining the EU was 90.4 percent and 63.4 percent voted yes. Rationality, reason, and logic can only be brought into play if the electorate comprehends the significance for them. If the perception is the opposite, then clichés and trite arguments will crowd out sober considerations; the turnout will be small and the no vote prevails. Add to that voters stand ready to use the referendum to teach the establishment a lesson.

Analysing the line followed by the British Prime Minister David Cameron it seems permissible to conclude that his original tactic was to unite the Tory party by asking for and getting some new terms from the EU, which could then lead to a referendum resulting in a yes vote. Several birds could be killed with this stone. Except for a limited hard core, the party would unite under the banner of putting the question before the people. The sceptics in the party could be won over when told that the matter was referred to the people and who could speak with a stronger voice than the British people. The Labour party had chosen to oppose a referendum, which would make this itinerary more palatable for Tory sceptics. Even if some noise would be heard on the run up to the referendum the Prime Minister could control the party promising a victory that would solidify its

hold on power in Westminster. After having manoeuvred to pacify both the sceptics and the yes camp he would come out strongly in favour of yes using his authority to convince sceptical Tory MPs and voters. The additional unsaid argument that the core of new terms would be about removing shackles from the EU on labour market rules would make it even more tantalizing in the eyes of the Tory party.

Unfortunately, Prime Minister Cameron faces the unpleasant situation that this political course has been derailed; nothing has turned out as predicted or expected.

The Tory party has not united behind the Prime Minister on the "in-out" issue even after winning the May 2015 general elections. On the contrary; the divisions inside the party are growing every day even opening up for the somewhat strange situation that ministers should be free to vote against the government. The party is busy tearing itself apart instead of closing ranks, and some prominent Tories regard this as an opportunity to topple the Prime Minister. That may be what it is, but the voters conclude that if Britain "in or out of the EU" is not more important than a tool in leadership of the conservative party they will tend to abstain or vote no.

The Labour party has not been put in difficulties, but simply stated after the general election that it now accepts a referendum. This is a low profile position leaving it to the government to do the work while it can sit on the fence watching the Tories throwing mud at each other.

During the process stretching back to David Cameron's early days as leader he has not shown clear commitment to the EU or any consistency in his EU policy. Because of this, not

many Britons will go to the ballot box thinking that the Prime Minister wants me to vote yes and I trust him so I will do so even if I do not understand much of what all this is about.

It is agonising to reach the conclusion that the preparation of the referendum has been mismanaged and the seeds of a likely no majority sown making it a Herculean task to reverse course. The sceptics among voter will vigilantly follow the events and trumpet any U-turns or shortcomings or failures.

## **What does Britain want - Treaty change or separate arrangement**

In principle Britain can go for either treaty changes or a separate arrangement – a combination is also thinkable.

A treaty change is a hazardous enterprise with a high risk of running aground. For a start all member states (28) have to agree and afterwards go through ratification processes according to their constitutional procedures. At best it is a time consuming, at worst it opens up the opportunity for some member states to ask for something in return. For example, Spain on the status of Gibraltar? Such 'blackmail' may be rejected, but that will be laborious, and expose the vulnerability of the exercise. The more far reaching changes Britain asks for, the more likely it is that some countries may resort also to a national referendum. In 1987 the Irish Supreme Court established that ratification by Ireland of any significant amendment to the treaties of the European Union requires an amendment to the Constitution of Ireland. All Constitutional amendments then require approval by referendum.

The British government has obfuscated the crucial issue of whether it wants a 'better' EU or feather one's own nest. Does it want treaty changes solely applicable to Britain – which is really what a part of the Tory party looks for talking about 'sovereignty back to Britain' – or does it want amendments applicable to all member states? The strategy and tactic is not the same. The first itinerary (a 'better' EU for all) requires coalition building and consensus building stretching over years supported by powerful arguments. It is somewhat of an Odyssey. The other 27 member states need to be convinced that Britain has raised an issue that is not exclusively British. So far the British government has not been able to get across that the problems listed are European problems, and worse still, some of the amendments on Britain's wish list will be harmful to Central- and Eastern European countries with workers going to Britain under the rules of free movement of labour. The alternative – a British problem – is simpler and can in principle be achieved faster, but is embedded with the disadvantage of having to argue convincingly that Britain is a special case – different from other member states – while at the same time belonging to the club. It is in fact a devilish challenge to steer this course and so far the philosopher's stone has eluded Britain.

For argument's sake let's suppose that a treaty change is accomplished and that a large part of the Tory party accepts these amendments as 'enough'- a rosy scenario. The campaign for a yes vote will take place under the cloud that no one knows whether the treaty change will be ratified by other member states. Suppose that the Prime Minister is asked what he will do if one or two member states do not ratify? What do you expect him to answer? Postponing the referendum till all member states have ratified is

not viable because some will not do so unless Britain is on-board. Trivial matters maybe, but they will cast a cloud of duplicity over the campaign. Ratifications take time. The Treaty on European Union was signed in December 1991 and entered into force 1 November 1993 – ratification took 20 months. Even if the British government sticks to its original timetable of 2017 such a long ratification timetable requires negotiation to end at the latest beginning 2016. Probably 20 months are optimistic bearing in mind that the Treaty on European Union had to be ratified by 12 member states while a treaty change for Britain will be submitted to 28 member states some of which may not regard it as the most pressing issue.

Margaret Thatcher once called the European Parliament (EP) a ‘Mickey Mouse’ parliament - something that still smart. The EP may not have the power to block the treaty changes, but it needs to be consulted. There are many tricks to delay and complicate the issue if it so wishes and it is likely that it would enjoy throwing a spanner into the works.

Irrespective of treaty changes or not the European Parliament has to say yes when turning political promises into legal acts. The Treaty on European Union from 1993 introduced co-decision. Subsequent treaty changes have strengthened the EP. The ordinary legislative procedure gives the same weight to the European Parliament and the Council of the European Union; the vast majority of European laws are adopted jointly by the European Parliament and the Council – neither of them can decide without the consent of the other. Among those sectors covered by co-decision is jobs and social policy; precisely in the sector chosen by Britain as battleground.

For Germany and France, with their own general elections in 2017 – ratification in these countries followed by a referendum in Britain is at the bottom of what these two countries wish, pushing a treaty change demanded by Britain into outer space.

Instead of treaty change, a much more likely outcome is for Britain to negotiate a binding agreement specifying exceptions for Britain.

## **The Danish Experience – The Edinburgh agreement.**

The Danish experience from 1992 and 1993 comes in handy. In 1992 a tiny majority of those who voted chose to say no to the Treaty on European Union. After negotiations the electorate was asked whether they thought the Edinburgh agreement granting Denmark four exceptions warranted a yes vote. The result was a yes and Denmark has since participated in the EU on this basis. What are the lessons to be drawn from the Danish experience?

First, the chain of events underline that a member state cannot ask for changes in the general provisions of the treaty to solve its own problems. That can only be done if all other member states agree that the problems or questions merit a treaty change because it affects all of them.

On the other hand there are almost no limits to what a member state can get of special clauses, provisions or derogations or transitional periods uniquely aiming at its specific problems provided they do not violate the treaties. In Denmark’s case the Edinburgh Agreement says ‘particular problems existing at the present time specifically for Denmark and raised in its memorandum ‘Denmark in Europe’ of 30 October 1992’/

The EU and the member states will not twist the foundation – objectives and instruments – to accommodate Britain, but will go a long way to offer concessions provided that Britain fulfils a number of conditions.

Britain must accept the principles of the existing treaty – subscribe to the goals set out in the preamble and the articles. This was repeatedly communicated to Denmark. The following wording cut the Gordian knot: *‘The European Council has agreed on the following set of arrangements, which are fully compatible with the Treaty, are designed to meet Danish concerns, and therefore apply exclusively to Denmark and not to other existing or acceding Member States’*. A final declaration says that *‘The Decision and Declarations above are a response to the result of the Danish referendum of 2 June 1992 on ratification of the Maastricht Treaty. As far as Denmark is concerned, the objectives of that Treaty in the four areas mentioned in sections A to D of the Decision are to be seen in the light of these documents, which are compatible with the Treaty and do not call its objectives into question’*. This was not without difficulties for Denmark in view of the Danish memorandum going some way towards questioning the objectives of the treaty, but the other member states were adamant.

Second, the member state in question must accept the loss of influence declaring and agreeing that it will not interfere in the integration among the other member states in sectors where it has asked for and got exceptions. The text in the Edinburgh agreement reads *‘noting that objectives, Denmark does not intend to make use of the following provisions in such a way as to prevent closer cooperation and action among Member States compatible with the Treaty and within the framework of the Union’*. This was not a

problem for Denmark, but could easily turn out to be so for Britain in view of the banking union. The City of London has vested interests that may need an active policy inside the EU, but that is hardly conceivable for Britain standing outside the single currency.

Third, subscribing to the treaty makes it necessary for exceptions to be limited in time. A permanent exception would in principle be the same as stepping out of certain treaty provisions. This is where the difference between opt-outs and opt-ins change from vocabulary to politics. Britain seeks opt outs, which means that exceptions are in principle for ever thus in reality breaking the commitment to the objectives and instruments enshrined in the treaty. Denmark got opt-ins, which means that in principle they are temporary. This is explicitly stated by saying *‘at any time Denmark may, in accordance with its constitutional requirements, inform other Member States that it no longer wishes to avail itself of all or part of this decision. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the European Union’*. The only reason for such a paragraph is obviously to keep the option open of opting out of the exceptions and opting in to the treaty. This was further borne out by the Minister for Foreign Affairs of Denmark in the Parliament (March 30, 1993) declaring that it was up to Denmark to decide on skipping the exceptions, but all political parties supporting the Edinburgh agreement (seven out of eight parties in the parliament) pledged that it required a referendum. The only reason to stipulate a procedure for opting in is to keep this option open.

Fourth, the member state in question must convince the other member states that it can win a referendum and is totally committed to fight for

a yes. Otherwise the other member states will be reluctant to offer concessions especially if they may be harmful for some of them.

Denmark published a white paper 20 September 1992 – less than four months after the first referendum 2 June 1992 followed by a memorandum 30 October 1992 setting out what it wanted. A thorough analysis to prepare the ground was followed by a policy paper. A large number of consultations with other member states and intensive political discussions at home ensured that these two papers did not come as a surprise. The Minister for Foreign Affairs of Denmark initiated meetings with the President of the Commission and the President of the European Parliament to seek good will and explain the Danish positions even if these two institutions were not directly involved in the negotiations. The meetings took place at the end of November prior to the decisive meeting in Edinburgh December 1992 of The European Council.

This had a large leverage on the subsequent referendum. Denmark did not deviate from the memorandum. The Edinburgh agreement is in conformity with the memorandum. The population could see that the process was steered by the government and not by EU institutions or other member states. The more this became clear the easier it looked to get the concessions and subsequently a yes vote.

It is dangerous to overshoot in the sense that a member country – in this case Britain – asks for too much and has to backpedal for eventually agreeing to something less than put forward in the opening phase. Those against EU membership will jump on what is missing and make a big case out of it.

## The referendum – the campaign

The final phase is the campaign itself. It has to be prepared, planned and striking the right cords with the electorate.

Experience discloses that the debate will not be about good or bad for Britain, but whether the result was what the Prime Minister wanted, whether the provisions are water proof (legally binding), and whether it actually is good – not good enough, but good. The no camp will insidiously look for all kind of reports, drafts, committee summaries, in particular from the European Parliament that contradict the government. ‘The European parliament has decided’ is a phrase the British public better get used to as the no camp would present papers as if they were adopted by the European Parliament even if in reality these papers would not stand any chance of being tabled at all. The no camp will likely also invoke the Court of Justice asking the Prime Minister hypothetical questions such as ‘suppose a different interpretation is adopted by other member states, business or private persons, can the Prime Minister guarantee that the Court of Justice will not rule against Britain’. This is not high-falutin nonsense, just think of the workers from Central- and Eastern Europe losing or fearing to lose non-discrimination.

Most of the media coverage will go to the dissenters and sceptics tearing the establishment’s arguments to shreds. Irrespective of the large number of politicians, business people and economists all advocating a yes somebody will pop up raising doubt over whether this is actually good or the correct thing. Already now we are served out the argument that outside the EU Britain is ‘free’ to export more to Emerging Markets and Developing Economies (EMDE)

without anybody nailing down the counter question how on earth that should be the case. The mainstream is convinced that the costs for the City of London will be limited, but Britain wants to make it more difficult to get into Britain to work with obvious negative consequences for the City of London.

In this phase – obviously crucial – credibility takes over as the main factor. The run up is not promising. The confusion inside the Tory party, the laid back attitude of the Labour party and the Scottish National Party sitting on the fence means that the electorate will be baffled not knowing what is right or wrong – good or bad.

The Danish experience tells that the doubters participating in the debate push the electorate towards a no. A long and fluffy article analysing one of exceptions putting forward arguments for and against is counterproductive for the yes camp even if the writer ends by stating that he/she will vote yes. This can be explained by the fact that a large part of the electorate is in doubt themselves and their doubt is compounded by such an article

– so they end up by voting no. If campaigning for a yes, present powerful arguments for one side only. Why Yes. Forget the other side. It is often heard that democracy requires the government to guarantee an even-handed debate. But not when the government has decided to put the result of its negotiations before the people having a firm view that the right thing is to say yes.

The second most dangerous trap is failure to invest political capital to continue the campaign in the face of positive opinion polls that says the yes vote will prevail. This conveys first to the party and then to the electorate that the matter is not important.

Very few referenda are a foregone conclusion. Denmark's case shows that even with solid support from the establishment and an overwhelming majority in parliament only 55.6 percent voted yes to the Edinburgh Agreement in May 1993. Consistent and clear arguments, hard work and huge amount of political capital has to be invested to ensure the outcome you want.

## ANNEX

### Denmark and the Treaty on European Union

*Official Journal C 348 , 31/12/1992 P. 0001 - 0001*

#### **(1) DENMARK AND THE TREATY ON EUROPEAN UNION (92/C 348/01)**

The European Council recalled that the entry into force of the Treaty signed in Maastricht requires ratification by all the twelve Member States in accordance with their respective constitutional requirements, and reaffirmed the importance of concluding the process as soon as possible, without reopening the present text, as foreseen in Article R of the Treaty.

The European Council noted that Denmark has submitted to Member States on 30 October a document entitled 'Denmark in Europe', which sets out the following points as being of particular importance:

- the defence policy dimension,
- the third stage of Economic and Monetary Union,
- citizenship of the Union,
- cooperation in the fields of justice and home affairs,
- openness and transparency in the Community's decision-making process,
- the effective application of the principle of subsidiarity,
- promotion of cooperation between the Member States to combat unemployment.

Against this background, the European Council has agreed on the following set of arrangements, which are fully compatible with the Treaty, are designed to meet Danish concerns, and therefore apply exclusively to Denmark and not to other existing or acceding Member States:

(a) Decision concerning certain problems raised by Denmark on the Treaty on European Union (Annex 1). This Decision will take effect on the date of entry into force of the Treaty on European Union;

(b) the declaration in Annex 2.

The European Council has also taken cognizance of the unilateral declarations in Annex 3, which will be associated with the Danish act of ratification of the Treaty on European Union.

(1) European Council, Edinburgh, 11 and 12 December 1992; Conclusions of the Presidency, Part B.



## ANNEX 1

DECISION OF THE HEADS OF STATE AND GOVERNMENT, MEETING WITHIN THE EUROPEAN COUNCIL, CONCERNING CERTAIN PROBLEMS RAISED BY DENMARK ON THE TREATY ON EUROPEAN UNION The Heads of State and Government, meeting within the European Council, whose Governments are signatories of the Treaty on European Union, which involves independent and sovereign States having freely decided, in accordance with the existing Treaties, to exercise in common some of their competences,

- desiring to settle, in conformity with the Treaty on European Union, particular problems existing at the present time specifically for Denmark and raised in its memorandum 'Denmark in Europe' of 30 October 1992,

- having regard to the conclusions of the Edinburgh European Council on subsidiarity and transparency,

- noting the declarations of the Edinburgh European Council relating to Denmark,

- taking cognizance of the unilateral declarations of Denmark made on the same occasion which will be associated with its act of ratification,

- noting that objectives, Denmark does not intend to make use of the following provisions in such a way as to prevent closer cooperation and action among Member States compatible with the Treaty and within the framework of the Union and its

Have agreed on the following decision:

### SECTION A

#### *Citizenship*

The provisions of Part Two of the Treaty establishing the European Community relating to citizenship of the Union give nationals of the Member States additional rights and protection as specified in that Part. They do not in any way take the place of national citizenship. The question whether an individual possesses the nationality of a Member State will be settled solely by reference to the national law of the Member State concerned.

### SECTION B

#### *Economic and Monetary Union*

1. The Protocol on certain provisions relating to Denmark attached to the Treaty establishing the European Community gives Denmark the right to notify the Council of the European Communities of its position concerning participation in the third stage of Economic and Monetary Union. Denmark has given notification that it will not participate in the third stage. This notification will take effect upon the coming into effect of this decision.

2. As a consequence, Denmark will not participate in the single currency, will not be bound by the rules concerning economic policy which apply only to the Member States participating in the third stage of Economic and Monetary Union, and will retain its existing powers in the field of monetary

policy according to its national laws and regulations, including powers of the National Bank of Denmark in the field of monetary policy.

3. Denmark will participate fully in the second stage of Economic and Monetary Union and will continue to participate in exchange-rate cooperation within the European Monetary System (EMS).

## **SECTION C**

### *Defence Policy*

The Heads of State and Government note that, in response to the invitation from the Western European Union (WEU), Denmark has become an observer to that organization. They also note that nothing in the Treaty on European Union commits Denmark to become a member of the WEU. Accordingly, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications, but will not prevent the development of closer cooperation between Member States in this area.

## **SECTION D**

### *Justice and Home affairs*

Denmark will participate fully in cooperation on Justice and Home Affairs on the basis of the provisions of Title VI of the Treaty on European Union.

## **SECTION E**

### *Final provisions*

1. This decision will take effect on the date of entry into force of the Treaty on European Union; its duration shall be governed by Articles Q and N(2) of that Treaty.

2. At any time Denmark may, in accordance with its constitutional requirements, inform other Member States that it no longer wishes to avail itself of all or part of this decision. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the European Union.

## **FINAL DECLARATION**

The Decision and Declarations above are a response to the result of the Danish referendum of 2 June 1992 on ratification of the Maastricht Treaty. As far as Denmark is concerned, the objectives of that Treaty in the four areas mentioned in sections A to D of the Decision are to be seen in the light of these documents, which are compatible with the Treaty and do not call its objectives into question.



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