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European Scrutiny Committee

The EU Bill and Parliamentary sovereignty

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Written evidence

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Declaration 17 to the Lisbon Treaty does not change the position on primacy; it merely reaffirms the existing doctrine of primacy and does not affect the incorporation of directly applicable and directly effective EU law into UK law through section 2(1) of the European Communities Act.

As the Explanatory Notes to Clause 18 make clear, it does not alter the existing relationship between EU law and UK domestic law, in particular, the principle of the primacy of EU law. However, it does reaffirm the position taken by Lord Hailsham, namely that it is only through the application of the doctrine of the sovereignty of Parliament—ie through an Act of Parliament—that the principle of primacy takes effect in the UK.

Written evidence from Professor Richard Rose FBA, Director, Centre for the Study of Public Policy, University of Aberdeen

THE EU BILL'S "REFERENDUM LOCK" FROM A EUROPEAN PERSPECTIVE.

1. The absence of a reference to referendums in the Lisbon Treaty shows the ambivalence of EU member states about the practice of holding national referendums on EU treaty changes. There is no desire in the European Council to add to the existing complexity of expanding EU powers by introducing a referendum. However, member states cannot object to national referendums being held on EU measures, because 18 member states have done so.

2. Although most Members of the European Parliament consider referendums an unnecessary or undesirable feature of representative democracy, this view is not shared by Europe's citizens. When the 2009 European Election Study asked *Do you agree or disagree that EU treaty changes should be decided by referendum?*, 63% voiced agreement, 18% were negative and 19% had no opinion. In every EU country most respondents were positive. In Britain, 81% endorsed the principle of referendums on treaties, 9% were against, and 10 had no opinion.

3. While the expansion of European Union powers in the past 25 years has increased the use of referendums, national referendums on EU matters remain relatively rare occurrences. However, the scope of the pending British bill raises the prospect of referendums dealing with many policy areas and the volume of new EU policies is not in the hands of the UK Parliament. Hence, to avoid the risk of "referendum fatigue", the Committee should consider how to ensure that provisions for securing approval through a Resolution or Act of Parliament may be deemed sufficient.

4. The co-decision process of the EU involves substantial negotiations between member states to arrive at an agreement. The pending bill will alter the position of the British government in this process. It faces other governments with the choice of adopting a measure that would trigger a British referendum or limiting changes to measures that will not require a ballot or if they do, be reasonably sure of British endorsement. However, the greater the majority in favour of a transfer of powers, the less weight that other countries are likely to give to a British referendum.

5. The bargaining that occurs among 27 countries in the negotiating process leading up to a treaty change can produce a document that bundles together a variety of alterations, some acceptable to Parliament while others are not. However, a referendum ballot reduces choice to a simple Yes or No to the package as a whole.

6. The Committee may want to consider whether a British referendum should be binding or advisory. A binding referendum has finality but also eliminates the possibility of re-opening negotiations in order to remove objectionable clauses in an otherwise acceptable policy package. There are precedents regarding Denmark and Ireland for the EU to modify a measure to make it more acceptable to a member state that has initially rejected it. If a referendum result was advisory, provision could be made that, with or without renegotiation, an affirmative vote of Parliament would be required for acceptance.

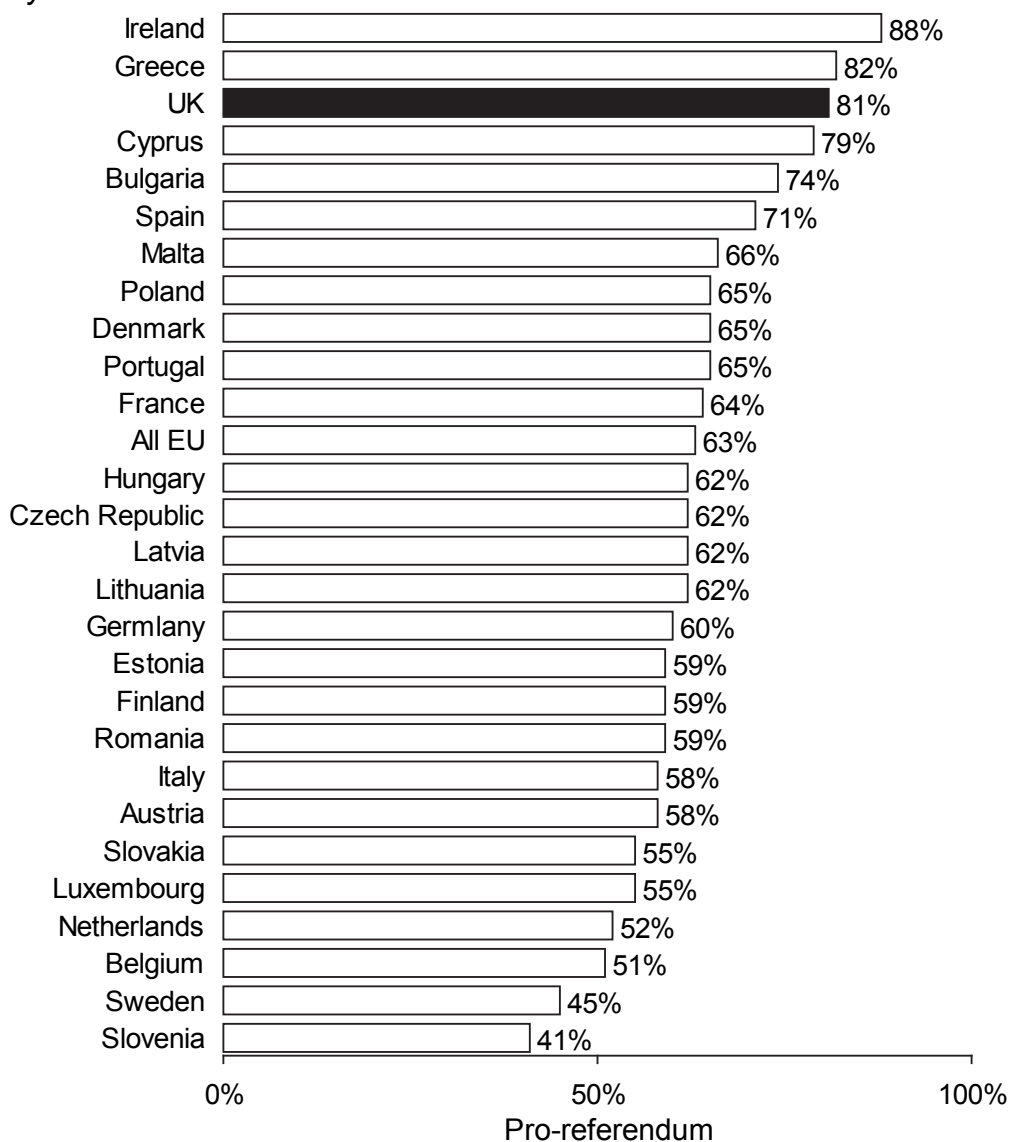
7. The political authority of a referendum result depends on the turnout and size of the majority. The Committee may want to consider whether the categorisation of a vote as binding or advisory should depend on the percentage of the electorate voting and/or on the size of a majority.

8. Because the EU referendum bill is concerned with procedures rather than the transfer of specific national powers to the EU, it is not inherently anti-integration. When the European Election Study asked whether European integration should be furthered or had already gone too far, across Europe the median group, 30%, gave replies that indicated it depended on the issue. In Britain, 24% said integration has already gone too far, 49% were in favour of more integration and 27% had no clear opinion. This indicates that in a referendum on a treaty change, the median Briton is likely to take a view related to what its specific aims are rather than treat a referendum as a vote for or against EU membership.

(This memorandum draws on research being conducted by the author as the Principal Investigator in a study of REPRESENTING EUROPEANS funded by the British Economic & Social Research Council. The opinions expressed are exclusively those of the author.)

2 December 2010

Q. Do you agree or disagree that EU treaty changes should be decided by referendum?



Source: European Election Survey, summer, 2009 ; www.piredeu.eu;
number of respondents: 27,069.