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# A ten-point plan to strengthen Westminster's oversight of EU policy

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One of David Cameron's EU reform demands is a greater role for national parliaments in the EU, in an attempt to make the Union more democratically accountable. Low turnouts in European elections have strengthened the British belief that the European Parliament is unrepresentative, and that national parliaments should have a stronger say.

Some suggest that parliaments should be able to club together to block a European Commission proposal, or to encourage the Commission to propose laws that would be in their interests. But the House of Commons' scrutiny of EU affairs is weak, and represents a missed opportunity to strengthen democratic accountability at the national level.

The Commons European scrutiny committee's membership is mostly eurosceptic, and committee attendance is poor. EU proposals have an impact on many other select committees' business, but these committees do not always examine them thoroughly. And unlike the House of Lords, the Commons European scrutiny committee does not have much first-hand experience of working with the EU's institutions.

This policy brief proposes ten steps that the British parliament and government can take to improve Westminster's engagement with the EU:

- ★ The chair of the Commons European scrutiny committee should be elected by the whole house rather than by committee members, which could help to soften the committee's euroscepticism.
- ★ MPs should talk to their colleagues in the House of Lords more often, in order to benefit from their EU expertise.
- ★ MPs and peers should establish a joint committee on the future of Britain's relationship with Europe, to provide scrutiny of Cameron's reform process.
- ★ British parliamentarians should invite MEPs more often to tell them their views on draft EU laws.
- ★ Each departmental select committee should appoint a *rapporteur* on EU issues to liaise with the scrutiny committee.
- ★ MPs should visit other parliaments to find out how they examine EU policy.
- ★ The British parliament should swiftly identify proposals in the Commission's programme that might breach the subsidiarity principle. This would give MPs more time to make use of the EU's 'yellow card' procedure, whereby national parliaments can make the Commission reconsider a proposal.
- ★ The government should allocate more time for debates on EU issues.
- ★ The prime minister should hold plenary debates with MPs before European Council summits, so they have a better idea of his negotiating stance beforehand.
- ★ On sensitive matters, the government should hold off-the-record briefings with parliamentarians.

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David Cameron, the British prime minister, promised in his Bloomberg speech on January 23<sup>rd</sup> 2013 that he would seek to reform the EU and renegotiate British membership if he won the next general election. Having secured a majority on May 7<sup>th</sup>, with 331 out of 650 seats in the House of Commons, Cameron will now have to deliver on his promise. He must try to redefine the UK's relationship with Europe in a way which appeals to the British people and to his eurosceptic backbenchers and then he must win a referendum on the UK's membership of the EU.

In the speech, Cameron advocated a greater role for national parliaments in EU decision-making. Securing this will be one of his priorities in negotiations with other EU capitals and Brussels. Cameron thinks that the European Parliament has failed to address citizens' concerns, and that national parliamentarians are better placed to ensure democratic legitimacy in the EU.<sup>1</sup> They are closer to the voters than are the members of the European Parliament (MEPs) who deliberate in far-away Brussels and Strasbourg. Indeed, the British trust their national parliament more than they trust the European Parliament.<sup>2</sup> In most other EU member-states, it is the other way around: according to the last Eurobarometer survey, 37 per cent of respondents trusted the EU and only 30 per cent their own national parliaments.

Many in the UK share Cameron's concerns that the European Parliament has failed to ensure the democratic legitimacy of the EU. Few were convinced that the *Spitzenkandidaten* process, whereby the candidate of the largest party in the European Parliament becomes the Commission president, would make things any better. The British largely viewed the new process as another unjustified power grab by the European Parliament rather than an attempt to narrow the gap between national and European politics. Because of the hostility towards the idea of *Spitzenkandidaten*, candidates were reluctant to visit London to present their electoral manifestos, thus missing the opportunity to connect more directly with British voters. Neither Jean-Claude Juncker, candidate of the European People's Party (EPP) and current president of the European Commission, nor Martin Schulz, candidate of the Party of European Socialists (PES) and the current president of the European Parliament, campaigned in the UK. The results of the May 2014 election to the European Parliament, which

saw a further drop in turnout across Europe, have only strengthened the British belief that national parliamentarians would do a better job of ensuring the accountability of the EU and therefore should play a greater role.

But what does 'a greater role' mean? In its election manifesto the Conservative Party supported the idea of allowing a group of national parliaments to block "unwanted" legislative proposals from the European Commission,<sup>3</sup> commonly known as a 'red card system'. Currently, national parliaments can object to a Commission proposal when they think it deals with something that can be better tackled at the domestic level (the subsidiarity principle). National parliaments can show a 'yellow card' to the Commission. The latter, however, is not legally obliged to abandon its proposal if it still thinks that the subsidiarity principle has been upheld.<sup>4</sup>

But some parliamentarians in other member-states think that the idea of the 'red card system' is flawed: it contributes to the view that parliaments are interested in obstructing the European agenda rather than in shaping it.<sup>5</sup> The House of Lords, together with the Danish parliament and the Dutch lower chamber, have recently supported a 'green card system', whereby parliaments could ask the Commission not just to repeal laws, but also to modify them and propose new ones if they thought this would benefit their citizens and businesses.<sup>6</sup>

In principle this is a good idea, offering a constructive way of engaging parliaments in EU business.<sup>7</sup> But are British MPs and peers prepared to take on new responsibilities in the EU? Are they sufficiently interested in European affairs? To answer these questions, this policy brief examines parliamentary scrutiny of EU affairs in both the House of Commons and the House of Lords. The way in

1: David Cameron, 'Speech about the future of Europe', January 23<sup>rd</sup> 2013.

2: According to Standard Eurobarometer, only in the UK, Denmark, Germany, the Netherlands, Austria and Finland do citizens trust their national parliaments more than the European Parliament. Standard Eurobarometer 82, December 2014.

3: The 2015 Conservative Party manifesto.

4: The 'yellow card procedure' involves national parliaments jointly objecting to a Commission proposal. Each member-state's parliament has two 'votes' (in bicameral parliaments, each chamber has one vote). If one-third of all the votes are cast against a Commission proposal (or one quarter in the case of justice and home affairs proposals), that constitutes a 'yellow card'. In such a case, the Commission has to reconsider its proposal; it can decide to withdraw it, amend it, or press on with it.

5: The Lisbon treaty allows parliaments to raise objections to a Commission proposal but it does not give them the right to initiate EU laws. In 2006 Jose Manuel Barroso, the former president of the European Commission, established a political dialogue with national parliaments in an attempt to increase their engagement. Ever since 2006 the Commission has been sending all its legislative proposals and other consultation papers directly to national parliaments for comment. Parliaments complained, however, that the Barroso Commission did not take the political dialogue seriously and ignored parliamentary feedback.

6: A letter from Lord Boswell of Aynho to chairpersons of the EU affairs committees of the national parliaments with accompanying note on a possible 'green card', January 28<sup>th</sup> 2015.

7: In 'How to build a modern European Union', the CER put forward the idea that a third or more parliaments should be able to request that the Commission legislates in a particular area, Charles Grant and others, 'How to build a modern European Union', CER report, October 2013.

which the two Houses of Parliament in Britain scrutinise EU business should provide evidence of whether British parliamentarians are likely to contribute constructively to the EU decision-making process rather than hamper it. How parliaments hold their governments to account for their actions in the EU and what challenges they

encounter in influencing government positions varies greatly between member-states. What lessons do other countries provide for both the British parliament and the new government on how to improve parliamentary scrutiny of EU affairs?

## Westminster and Europe: Different approaches to the same matters

Ever since Britain joined the European Communities in 1973, both the House of Commons and the House of Lords have scrutinised the government's European policy. Westminster adopted a 'document-based' system whereby both Houses of Parliament simultaneously examine EU documents given to them by the government. The EU has kept MPs and peers busy: each year they have to sift through roughly 1000 EU legislative proposals and other EU related documents such as the Commission's consultation papers.<sup>8</sup>

The two houses take different approaches to European affairs, however. MPs who are elected to the House of Commons almost always represent a specific party, and their primary responsibility is to support their party's programme. Unless the government of the day is focused on EU business, such as when there is an EU treaty to ratify, they are unlikely to spend much time on EU affairs. The 2015 general election campaign is a case in point. Party leaders devoted little attention to the EU in their public appearances. Europe appeared only in the context of migration and the in-out referendum that Tories promised to hold.

The current, highly centralised system of Commons scrutiny of EU affairs only makes things worse. During the last parliamentary term, responsibility for handling EU business rested predominantly on the shoulders of the 16 members of the European scrutiny committee. The committee may request an opinion from relevant departmental select committees but they are not obliged to provide one. The record of co-operation between the scrutiny committee and the other committees is mixed. Some committees (such as the justice committee) help in examining EU documents but others are less inclined to do so.<sup>9</sup> The European scrutiny committee can either immediately clear an EU document from scrutiny or examine it more closely. The latter happens if the committee considers EU documents 'legally or politically important'. The committee may

ask the relevant government minister for further clarifications. It can also request a debate on the floor of the house or in one of the three ad hoc EU committees. It is, however, up to the government to decide whether to allocate time for parliamentary discussion.<sup>10</sup>

*“The EU has kept MPs and peers busy: each year they have to sift through roughly 1000 EU documents.”*

Each of three EU committees (A, B and C) covers a specific group of issues: EU Committee A, for example, is responsible for, among other things, energy, climate change, food and rural affairs.<sup>11</sup> The EU committees do not have a permanent membership; they convene only when the scrutiny committee requests a debate, at which point the Commons' committee of selection nominates MPs to serve on them. The EU committees' meetings are open to other MPs, but the latter cannot vote. Nominating MPs to sit on these ad hoc committees is not always easy: the selection committee sometimes struggles to find MPs who are interested in the topic discussed.

As appointed or hereditary members of Parliament, members of the House of Lords have no responsibility to a constituency and have more time to analyse documents that the government deposits with Parliament. Whereas the Commons focuses on the political and legal importance of EU documents, the major objective of the Lords' scrutiny process is to contribute to better law making and to increase public understanding of what the British government does in the European Union.<sup>12</sup>

The EU select committee in the House of Lords is a 'parent committee' to six sub-committees which look at different EU policies such as the internal market, economic and financial affairs, justice and institutions, external affairs,

8: The House of Commons and the House of Lords standing orders specify the types of documents the government needs to deposit with Parliament.

9: House of Commons, European Scrutiny Committee, 'Reforming the European Scrutiny System in the House of Commons. Twenty-fourth report of the session 2013-2014', volume 1, November 20<sup>th</sup> 2013.

10: There is one exception to this rule. If the Backbench Business Committee, which has a certain amount of time allocated outside the government control, demands it, the government has to schedule a debate on the floor of the House. See Ariella Huff, Julie Smith,

'Westminster and the European Union: ever-increasing scepticism?' in: Claudia Heffler, Christine Neuhold, Olivier Rozenberg, Julie Smith (eds), 'The Palgrave handbook of national parliaments and the European Union', 2015.

11: The responsibilities of the three EU committees are laid out in the Standing Order No. 119.

12: Introduction to the work of the EU select committee of the House of Lords, video, <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee-/role/>.

agriculture or home affairs. Peers who sit on these committees often have a deep understanding of EU affairs and experience in working with, or for, EU institutions. Lord Kerr, who is a member of the select committee and of the EU economic and financial affairs sub-committee, served as the UK's permanent representative to the EU from 1990 to 1995 and as secretary general of the convention on the future of Europe (which drafted the EU constitutional treaty) from 2002-03; Baroness Quin, who chairs the EU justice, institutions and consumer protection sub-committee, was one of the first directly elected British MEPs and was subsequently Europe minister under Tony Blair. Lord Tugendhat, who is the chair of the EU external affairs sub-committee, was a European Commissioner from 1977 to 1985. In the Lords' scrutiny system, the chair of the EU select committee sifts EU documents with the help of administration staff. He can decide to clear documents from scrutiny or refer them to one of the sub-committees. The latter may decide to ask the relevant minister for further clarification. The sub-committees may also decide to conduct a full inquiry and produce an evidence-based report. The Lords' reports also analyse the views of other member-states on the issue in question as well as those of the UK. They may be helpful not only for the British government but also for the European Commission which can use these ideas to bridge differences between member-states before it comes up with legislative proposals.

But Westminster's powers go beyond scrutinising the British government's European policy. Both the

House of Commons and the House of Lords can provide feedback to the Commission on its actions as well. In 2005, after the Dutch and French rejected the constitutional treaty, the Commission realised that national MPs needed to be better informed about what happened in Brussels; this would help the Commission gain wider public support for its actions and facilitate their implementation.<sup>13</sup> Since 2006 the Commission has therefore sent all its legislative proposals and consultation papers to parliaments for comment.

*“Peers who sit on these committees often have a deep knowledge of and experience in working in EU affairs.”*

Here, the approach of the two houses again differs: the House of Lords immediately grasped the opportunity to comment on the Commission's work, but the House of Commons has been reluctant to do so.<sup>14</sup> Since December 2009, after the Lisbon treaty entered into force, national parliaments have also been able to object to the Commission's legislative proposals on the grounds that they violate the subsidiarity principle (the 'yellow card procedure'). The House of Commons has used this procedure more eagerly than the House of Lords. In 2014 it opposed three of the Commission's proposals within this procedure. In the same year, the House of Lords did not oppose any proposal.<sup>15</sup>

## Westminster's patchy scrutiny of EU affairs

In the last four decades, Westminster has developed some useful scrutiny practices, such as the parliamentary scrutiny reserve, which parliaments in some member-states, such as the Czech Republic and Malta, have emulated.<sup>16</sup> With some exceptions, enumerated in the scrutiny reserve resolutions of the House of Commons and the House of Lords, the British government cannot agree to any EU proposal in the Council of Ministers or the European Council before Parliament clears it from scrutiny.<sup>17</sup> The obvious advantage of the scrutiny reserve is that it helps parliamentarians exert pressure on the government to fully inform them about the current negotiations in Brussels. If parliamentarians think that they lack sufficient information about a certain EU document, they will be reluctant to clear it from scrutiny. And since the government cannot agree

on any decision in the Council of Ministers or the European Council on a document which is still being looked at by Parliament, it should, at least in theory, respond to Parliament's queries as soon as possible. Not all parliaments in EU member-states have this opportunity: the Irish parliament, for instance, does not have a scrutiny reserve and therefore has limited ability to exert pressure on its own government.

However in practice the British government sometimes overrides the scrutiny reserve: between July and December 2014 there were 49 overrides.<sup>18</sup> Some of these had a clear justification: 36 concerned EU foreign policy instruments which remain confidential until adopted. When, for example, economic sanctions are

13: Communication from the Commission to the European Council, 'A citizens' agenda. Delivering results for Europe', European Commission, COM (2006) 211 final.

14: Report from the Commission – Annual Report 2008 on relations between the European Commission and national parliaments; between 2006-08 the House of Lords issued 30 opinions on the Commission's work; the House of Commons only three.

15: Both the House of Commons and the House of Lords had reservations about the Commission's proposal on occupational pensions in 2014 but due to the parliamentary recesses they failed to meet the deadline of eight weeks allowed for the 'yellow card' to

be issued. Opinions submitted beyond the deadline will not count towards the number of votes needed to trigger a yellow card.

16: K. Aulel, Olivier Rozenberg, Anja Thomas, 'Lost in transaction? Parliamentary reserves in EU bargains', OPAL Online Paper Series, no 10, 2012.

17: House of Commons' scrutiny reserve resolution, November 17<sup>th</sup> 1998; House of Lords' scrutiny resolution, March 16<sup>th</sup> 2010.

18: Government's answer to a parliamentary question from Lord Boswell; answer received on February 11<sup>th</sup> 2015, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-01-28/HL4496/>.

under discussion, the government would not want to risk tipping off likely targets in advance of a decision, enabling them to transfer assets beyond EU jurisdiction.

Westminster is a model of transparency in policy-making. The British government publishes the explanatory memoranda that it sends to Parliament with EU documents.<sup>19</sup> Memoranda include a short summary of the document and an assessment of the probable impact on the UK. Parliamentarians also publish the correspondence between the committee chairs and British ministers or between chairs and EU institutions. The public can follow both the government's actions in the EU and MPs' responses to it; citizens can judge if parliamentarians are fulfilling their duties and holding the government to account.

But it is the very transparency of the British parliament that makes it easier to identify the scrutiny system's drawbacks. Lack of active engagement in EU affairs among the British MPs is a major issue. The European scrutiny committee of the House of Commons publishes statistics on the attendance of committee members, which shed light on the degree of interest MPs have in EU affairs. The overall attendance rate in 2014-15 (until Parliament was dissolved) was 48.7 per cent. In the 2013-14 session, the turnout was only slightly higher at 53.3 per cent.<sup>20</sup> Three members of the scrutiny committee (out of 16 members) did not attend a single committee meeting in the 2014-15 parliamentary session.

But even if all the committee members were carrying out their duties diligently and were interested in the EU, they would still need the help of other parliamentary colleagues with scrutinising EU affairs. The European scrutiny committee is aware of the problem. In the 2013-14 session, it conducted its own inquiry into scrutiny

practice in the Commons and on March 25<sup>th</sup>, days before Parliament's dissolution, it published a follow-up report. The inquiry has confirmed that other MPs are not always as dedicated to the scrutiny of European affairs as they could be.<sup>21</sup> Members of the departmental select committees are reluctant to sit on the three ad hoc EU committees, for instance.<sup>22</sup> They prefer not to invest too much time and energy in the EU scrutiny process, focussing instead on their other responsibilities. Debates in the EU committees are often poorly attended and attract little interest even from the MPs nominated to serve on them. On one occasion, a debate on EU law-enforcement co-operation lasted only 13 minutes: only one of the 13 MPs who attended the committee meeting asked the minister present a question.<sup>23</sup>

*“The transparency of the British parliament makes it easier to identify the scrutiny system's drawbacks.”*

This limited interest in European affairs in the Commons has benefited eurosceptics. They have been among the most active members of the European scrutiny committee. William Cash, Jacob Rees-Mogg, Kelvin Hopkins and Henry Smith, who had the best record of attendance in the 2014-15 session, backed a bill enshrining in law the Conservatives' pledge to hold a referendum on British membership.<sup>24</sup> In total, nine out of 16 of the committee members voted in favour of this bill in its second reading. The concentration of eurosceptics in the scrutiny committee may be one factor discouraging other, more pro-European MPs, from joining it.

## It takes two to tango: Government's role in improving parliamentary scrutiny of EU affairs

The previous coalition of the Conservatives and the Liberal Democrats did little to dilute this eurosceptic caucus in the committee or to confront their arguments. It was reluctant to allocate time for debates on EU issues. Between January 2014 and the end of February 2015, the scrutiny committee recommended that eight issues should be debated by the full House of Commons, but only two of the recommended debates took place before

Parliament was dissolved. The scrutiny committee's request in January 2014 for a debate on the free movement of EU citizens also fell on deaf ears in Downing Street. Despite the Conservative Party identifying free movement of labour as one of the areas of EU policy to be reformed, the coalition government was unable or unwilling to have a frank discussion in Parliament on the arguments for and against it.

19: Available at <http://europeanmemoranda.cabinetoffice.gov.uk/>.

20: Attendance statistics from 2010-12, 2013-14, 2014-15 available here: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/european-scrutiny-committee/formal-minutes/>.

21: House of Commons, European Scrutiny Committee, 'Reforming the European Scrutiny System in the House of Commons. Twenty-fourth report of the session 2013-14; November 20<sup>th</sup> 2013; House of Commons, European Scrutiny Committee 'Scrutiny reform follow-up and legacy report. Thirty-eighth report of session 2014-15', March 18<sup>th</sup> 2015.

22: Written evidence submitted by the liaison committee to the

European scrutiny committee inquiry on parliamentary scrutiny of EU affairs, October 25<sup>th</sup> 2012.

23: Transcript of the debate with Crispin Blunt, the Parliamentary Under-Secretary of State for Justice in EU committee B on May 22<sup>nd</sup> 2012 to consider EU criminal justice and detention; <http://www.publications.parliament.uk/pa/cm201213/cmgeneral/euro/120522/120522s01.htm>.

24: Data on how MPs sitting on the European scrutiny committee voted and on their views on the UK's membership in the EU is provided by the web service 'They work for you'; <http://www.theyworkforyou.com/>.



In its response to the committee's criticism, the government questioned the rationale for plenary debates on Europe, claiming that no MPs outside the European scrutiny committee were interested in a discussion of European affairs.<sup>25</sup> But the government is itself partly to blame for the lack of wider MPs' engagement in European affairs. Apart from the scrutiny system, which often deals with issues on which the European Commission has already made specific proposals, MPs and peers would like to have more influence on the overall process of formulating the UK's European policy, that is, before proposals are being made. However the government has often failed to take parliamentarians' concerns on board, or even to give them a formal opportunity to express them. It scrapped the practice of holding plenary debates with MPs before European Council meetings and as such limited the scope for parliamentarians to influence government policy. Before each European Council meeting, Cameron sent letters to both Houses outlining the government's position on the agenda, but – with one exception – never allocated time for a debate before the meeting.<sup>26</sup> He personally reported to MPs only after the European Councils.

When parliamentarians expressed concerns about the government's EU policy in various reports, the coalition government often ignored them. Its position on the financial transaction tax (FTT) is a good example: the Lords' EU economic and financial affairs' sub-committee had first warned the British Treasury in March 2012 that the FTT would affect the British financial sector negatively. It added that even if the government intended to oppose the idea of the EU-wide FTT, it should still engage in further discussions about the FTT with other member-states.<sup>27</sup> The sub-committee foresaw that the FTT could have an impact on the City of London despite the UK's decision not to participate in it. But the government did little to prevent 11 member-states from entering into so called 'enhanced co-operation' on the FTT. Enhanced co-operation is a procedure which allows a group of member-states to act in a policy area which is not exclusively in the EU domain, when member-states "have established that the objectives of the proposal cannot be attained by the Union as a whole".<sup>28</sup> But the other member-states need to authorise the use of enhanced co-operation; when the FTT was discussed in the Council in January 2013 the British government did not oppose it but abstained from voting. It only woke up to the Lords' concerns in April 2013, when it challenged the decision on enhanced co-operation in the

European Court of Justice.<sup>29</sup> Had the government listened to the House of Lords and started work earlier, it might have been able to convince member-states which did not intend to adopt the FTT to oppose the 11 member-states who pushed ahead with enhanced co-operation.

*“The previous coalition government did little to dilute this eurosceptic caucus in the scrutiny committee.”*

The British government has also refused to deposit with Parliament classified or sensitive EU documents relevant to the scrutiny process. Nor does it share so-called non-papers (informal position papers drafted by other member-states). This is not unreasonable: diplomatic negotiations would be harder to conduct if the opening positions of the parties were made public. Too much transparency at this stage might lead to countries being forced to take tougher positions than they would otherwise adopt, so as to avoid losing face by making concessions in public. But confidentiality between governments inevitably means that parliamentarians do not know all the factors that have shaped the documents that the government submits for scrutiny. MPs are not keen on clearing EU documents from scrutiny unless they have a comprehensive understanding of the government's position.

Britain still has a long way to go before it catches up with member-states where parliamentarians vigorously scrutinise their governments' European policy. The Swedish *Riksdag* is exemplary: not only does it scrutinise European affairs efficiently, but it also submits the largest number of opinions under the 'yellow card procedure'.<sup>30</sup> But the *Riksdag* also enjoys a strong institutional position vis-à-vis the Swedish government, while the British parliament does not. The Swedish government needs to obtain a parliamentary mandate before it enters into legislative talks in the EU. If EU ministers propose something that exceeds the mandate given by the *Riksdag*, the Swedish minister must first consult the MPs about the changes, often by telephone.<sup>31</sup> British ministers are not used to making calls to consult their MPs when they are in Brussels. Although British MPs have been examining EU documents for more than two decades longer than Swedish MPs, they have had limited influence on their government's European agenda. This is in part because

25: Evidence given by Rt Hon William Hague MP, First Secretary of State and Leader of the House, February 16<sup>th</sup> 2015.

26: William Cash managed to secure a parliamentary debate with the prime minister before the European Council in March 2012; Wolfgang Wessels, Olivier Rozenberg, et al, 'Democratic control in the member states of the European Council and the eurozone summits', study conducted by the European Parliament, Questionnaire on the 27 member-states, Annex I to the study, 2013.

27: House of Lords, European Union Committee, 'Financial Transaction Tax: alive and deadly, seventh report of the session 2013-2014', December 10<sup>th</sup> 2013.

28: Article 20 of the Treaty on the European Union, OJ C 326, October 26<sup>th</sup> 2012.

29: In its verdict the Court of Justice found that the UK's claims were premature as the FTT was not in place yet and the negotiation among interested parties were still ongoing.

30: Ellen Mastenbroek, and others, 'Engaging with Europe. Evaluating national parliamentary control of EU decision making after the Lisbon treaty', part I: report of findings, Institute for Management Research, Radboud University.

31: See footnote 30.

post-war British governments have had, with a few exceptions in the 1970s, stable majorities in Parliament, with disciplined parliamentary parties voting as the government wished.

There is some good news for British parliamentarians, however (though not for EU citizens, perhaps). Some parliamentary chambers have less influence on their government's policy than the British parliament. A group of academics from Maastricht, Cologne, Cambridge

University and Sciences Po produced the first detailed and comprehensive data on parliamentary involvement in European affairs. This showed that the Slovenian or Romanian upper chamber, as well as both Belgian chambers are among the so called 'scrutiny laggards'.<sup>32</sup> But being in the middle of the pack is not something British parliamentarians should be proud of; British parliament should emulate the leaders, not the laggards; and boost the engagement of its own parliamentarians in European business.

## Ten ideas for improving parliamentary scrutiny of EU affairs

The first thing incoming MPs should do is to schedule early study trips to other EU parliaments. Across the European Union, parliaments are facing similar problems to those of British MPs. The European affairs committee of the Danish *Folketing*, which is often seen as the benchmark in scrutinising EU affairs, is also struggling to get other MPs to help it examine EU documents and the government's European policy.<sup>33</sup>

National parliaments are also becoming more aware of the need to reform their practices in order to keep pace with EU developments. In 2011, the Irish parliament shifted its scrutiny duties to the select committees in order to get more Irish MPs involved and interested in European affairs. British parliamentarians could ask their Irish colleagues how they assess these changes. Berlin is also a 'must' on MPs' study trips to other EU capitals. German MPs have considerably increased their powers of scrutiny in EU affairs. In the 1950s, the government only gave information to the *Bundestag* on a voluntary basis. Today it is not only obliged to share official EU documents but also to inform MPs about unofficial, often sensitive documents it receives on EU matters.<sup>34</sup> German MPs could explain how this evolution took place. Over time, such contacts with other parliaments could lead to the development of a code of best practice for parliamentary scrutiny of EU affairs.

British MPs could also visit their counterparts in The Hague. The lower chamber of the Dutch parliament is well known for planning its EU-related activities far in advance. The *Tweede Kamer* uses the Commission's annual programme to organise its EU-related work better and to identify which of the future Commission proposals are likely to be of particular importance to Dutch MPs. Thanks to this practice draft EU legislation rarely catches Dutch MPs by surprise.

But as well as getting the views of other European parliamentarians, British MPs should not forget that

the European scrutiny committee conducted its own inquiry into the scrutiny system in 2013. The evidence gathered then could serve as a starting point for any discussion between backbenchers and ministers about reforming the system. Incoming MPs should study these recommendations carefully. Some of the ideas presented in the course of the inquiry would help Parliament to handle EU business more effectively.

*“Being in the middle of the pack is not something British parliamentarians should be proud of.”*

Second, the House of Commons should spread EU business more equally among MPs. This could help improve the overall level of knowledge of EU affairs. The Irish experience suggests, however, that it would be best to take a step-by-step approach and to give MPs time to get to grips with the details of EU business. Despite the 2011 reform the Irish MPs appear to be struggling to balance the domestic agenda with examining EU affairs, and often prioritise domestic issues over EU business.<sup>35</sup>

To avoid the Irish problem, the European scrutiny committee sensibly suggested in its inquiry and follow-up report that each British select committee appoint *rapporteurs* for European issues. In the last parliament two committees tested this idea: the justice committee appointed one committee member and the business, innovation and skills committee nominated two members to liaise with the European scrutiny committee on EU proposals. This should become standard practice in Parliament. The *rapporteurs* would be the contact points for the scrutiny committee whenever it requested the opinion of a departmental select committee. They would be responsible for ensuring that their departmental select

32: Katrin Aulel, Olivier Rozenberg, Angela Tacea, 'Fighting back? And, if so, how? Measuring parliamentary strength and activity in EU affairs' in: Claudia Heffter, Christine Neuhold, Olivier Rozenberg and Julie Smith (eds) 'The Palgrave handbook of national parliaments and the European Union', 2015.

33: 'The Parliament has to get in the EU game', Think tank EUROPA, November 10<sup>th</sup> 2014.

34: 'Act on cooperation between the federal government and the German Bundestag in matters concerning the European Union', July 4<sup>th</sup> 2013.

35: Gavin Barrett, 'Long train running: the slowly developed (and slowly developing) role of Ireland's Oireachtas in EU affairs in': Claudia Heffter, Christine Neuhold, Olivier Rozenberg, Julie Smith, 'The Palgrave handbook of national parliaments and the European Union', 2015, p. 296.



committee responded on time to the scrutiny committee. Rapporteurs should also participate in the meetings of the three EU ad hoc committees, whenever the European scrutiny committee refers EU documents for their consideration. This would help to improve the quality of their deliberations.

Some experts are sceptical about the idea of *rapporteurs*.<sup>36</sup> They suggest that in practice EU-related work would always land on the rapporteurs' desks and that other MPs would not need to acquire any more interest or expertise in EU affairs than they already have. It is probably the case that changing the mindset of MPs will not be easy and will take time. But even if the rapporteur system turns out to be imperfect, it should be given a chance to prove itself.

Third, Parliament should plan its EU-related activities better. Currently, the European scrutiny committee in the House of Commons and the chair of the EU select committee in the House of Lords can only decide which documents should be cleared without detailed examination, and which should be given further consideration, once the government has deposited them with Parliament. MPs and peers could follow the example of the Dutch lower house and use the Commission's annual work programmes to identify which proposals are likely to be of particular importance to the UK.

At the end of 2014 William Cash decided to test whether this practice would work in the British system, and wrote to the chairs of the departmental select committees asking them to flag up Commission proposals which were important and relevant to their work. Nine committees replied to his letter and shared their ideas. The work programme was eventually debated by the entire House on March 9<sup>th</sup>. Out of 23 new Commission proposals in the work programme, MPs focused mainly on migration policy and freedom of movement.<sup>37</sup> Only one select committee chair actively participated in the debate: Keith Vaz, the chair of the home affairs committee and a former Labour Europe minister. Other chairs should take advantage of the plenary debates on the Commission work programme too and highlight those proposals which are important to the work of their committees and to the UK. A thorough analysis of the Commission's annual programme would also help flag up any proposals which might raise subsidiarity questions. That would enable parliamentarians to start their detailed examination earlier and submit their opinion in good time, rather than missing the Commission's deadline for objections.

Fourth, the House of Commons should elect the chair of the European scrutiny Committee, as is the case for departmental select committee chairs.<sup>38</sup> A directly

elected chair would enjoy greater authority among other MPs and could increase their interest in joining the committee and competing for the job. As a result, this could help to dilute the Eurosceptic caucus in the European scrutiny committee.

*“The House of Commons should spread EU business more equally among MPs.”*

Fifth, MPs should talk to their colleagues in the House of Lords more often. Today, MPs and peers rarely exchange views on EU legislative proposals or co-ordinate their actions in the framework of the 'yellow card' procedure. This is wrong: lack of co-operation between the two houses on EU legislation makes it less likely that the Commission will come under pressure to withdraw a proposal. In contrast to the parliamentarians, the clerks of the committees and the legal advisers in the two houses co-operate well and exchange views on legislative acts and subsidiarity questions.

Sixth, parliamentarians should consider establishing a joint committee on the future of the British relationship with Europe, to provide parliamentary oversight of the renegotiation process. There are already joint committees on human rights and on the national security strategy, so establishing a joint committee would not be unprecedented. It could help to ensure that parliamentarians in both houses learn from one another, and that both houses contribute to a balanced discussion of the UK's relationship with Europe. This is crucial in the run up to the referendum. Such a joint committee should not replace the existing European scrutiny committees: normal EU business will have to carry on independent of negotiations on the terms of the UK's membership in the EU.

Seventh, British parliamentarians should make better use of the experience of their colleagues in the European Parliament. The UK national parliament office in Brussels organises joint meetings for MPs, peers and British MEPs twice a year. This is not often enough to support effective co-operation on European affairs. In the German *Bundestag* and the Polish *Sejm* (the lower chamber of the Polish parliament), MEPs can participate in meetings of the EU affairs committees. They cannot vote but they can contribute their views and ideas to the committee's discussions. The committees' schedules often conflict with MEPs' responsibilities in the European Parliament and MEPs do not always show up. But it is better to have a regular platform to exchange views on Europe than none at all.

36: Oral evidence by Katrin Auel, Ariella Huff, and Julie Smith to the inquiry of the European scrutiny committee, December 12<sup>th</sup> 2012.

37: A transcript of the House of Commons' debate on March 9<sup>th</sup> 2015, <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150309/debtext/150309-0002.htm#15030923000001>.

38: Direct election of the chairs of departmental select committees as well as chairs of environmental audit, public accounts, public administration, political and constitutional reform and procedure committees was introduced in 2010; 16 out of 24 available posts were subject to the contest; Liaison committee, 'Legacy report. First report of the session 2014-2015', March 11<sup>th</sup> 2015.

In 2005 the committee on modernisation of the Commons recommended setting up a joint committee of the two houses, in which UK members of the European Parliament could participate.<sup>39</sup> This idea turned out to be too controversial for MPs. MEPs can still only give their views directly to MPs if the scrutiny committee invites them to give evidence as part of an inquiry. Only MPs can be full members of the scrutiny committee or speak on the floor of the house. British MEPs do not even have free access to the House of Commons.<sup>40</sup> It is time that the 2005 recommendation was re-considered. If it is still too revolutionary, MPs and peers should instead make more use of their party channels to stay in touch with British MEPs. The latter could keep parliamentarians informed about the legislative process in Brussels, particularly in those areas of most importance to the UK.

Eighth, although MPs can do a lot themselves to improve their scrutiny of European affairs, the government needs to co-operate too. The European scrutiny committee sensibly suggested that the government allocate time for EU debates within four sitting weeks from the committee's request. And if the government does not want to discuss certain European issues, it should be honest about it. The government should put the question to a vote, and let Parliament decide whether it wants a discussion of EU matters or not.

Ninth, the new government should reintroduce the practice of holding plenary debates with MPs on the agenda of forthcoming summits. One way to get more MPs interested in EU affairs is to give them a feeling of greater influence over the positions the prime minister takes in Brussels. While the prime minister would not be able to reveal all the details of his negotiating strategy before the summit, he should give MPs an idea of the UK's major objectives for the meeting. Such debates will be particularly important in the light of the forthcoming membership renegotiation. The European

Council will be the primary forum for deciding whether to consider Britain's list of proposed reforms. A pre-summit parliamentary debate about what is at stake would enable MPs to have an open discussion of the government's renegotiation agenda.

*“MPs should talk to their colleagues in the House of Lords more often.”*

Finally, on some sensitive questions the government should hold informal policy briefings for MPs from the European scrutiny committee and for peers from the EU select committee and its sub-committees. It could also invite rapporteurs from departmental select committees to the briefings, if these posts are created in the new Parliament. The briefings could be held on so-called Privy Council terms whereby participants promise not to reveal what they learn during the meeting. In the past the British government held informal meetings on proposals for international sanctions regimes, but only with peers. Members of the Commons scrutiny committee complained that such confidential briefings would undermine the transparency of Parliament; but the government cannot offer more without exposing itself to criticism from other member-states for revealing classified information. Briefings of this sort would give Parliament a more comprehensive picture of the dossier under scrutiny. Some governments have a well-established practice of sharing more sensitive information with their national parliament: the German government gives information about contributions from other member-states to EU consultations. And Danish MPs, who sit on the *Folketing's* European affairs committee, can agree with the minister responsible for the subject under scrutiny to hold a closed hearing in which sensitive information can be debated.

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## Conclusion

The British prime minister is not alone in wanting to narrow the perceived gap between citizens and the EU. His answer is to give national parliaments more say at the European level. But as long as national parliaments know and care little about EU affairs, upgrading their role in EU decision-making will not solve the problem of democratic legitimacy.

Improving its own parliamentary scrutiny of European affairs would strengthen Britain's hand in calling for a stronger voice for national parliaments in EU decision-making. Today, British MPs are often too focused on the

domestic agenda and have limited interest in European affairs; they do not take full advantage of the possibilities they already have to engage in a dialogue with the Commission over its planned activities. Currently, MPs are ill-suited for the envisaged stronger role that the British government would like them to perform in the EU.

David Cameron should look for constructive ways in which parliamentarians can get involved in the EU decision-making process. In the run up to the general election Cameron was under pressure from some of his backbenchers to strike a more eurosceptic tone, in

39: 'Modernisation of the House of Commons', second report, March 16<sup>th</sup> 2005, <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmmodern/465/46502.htm>

40: Based on interviews.

order to compete with the anti-EU UK Independence Party (UKIP). With the election won, Cameron can now take a fresh look at how best to use parliamentary mechanisms to promote UK interests in the EU. He can show the British public that membership of the EU does not have to lead to a loss of democratic influence over law making. In this context, the 'green card' system suggested by Lord Boswell and his Danish and Dutch colleagues could offer parliaments a chance to show that they can make a constructive contribution to EU policy-making, rather than simply obstructing what the Commission wants to do.

So far, however, the UK has mainly called for the introduction of the 'red card system' whereby national parliaments could club together and block unwanted EU legislation. Such a proposal is likely to receive a chilly reception from other European capitals and from the Commission, not to mention the European Parliament.

Germany and Poland have hinted, for instance, that they would be willing to discuss ways to improve the current 'yellow card' procedure, by extending the period in which parliaments have to raise objections to a Commission proposal on the basis of the subsidiarity principle. But they would oppose granting parliaments ultimate blocking rights in EU decision-making. Indeed, the single market, to which the UK attaches so much importance, would probably never have been established if national parliaments had been given the chance to block it.

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