



Democratic Accountability in the EU

The Senior European Experts is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU and other former officials of the institutions of the EU. The group prepares briefing papers on current EU topics for opinion-formers, of which this is a recent example.

Introduction

The legitimacy of the institutions of government, essential for a well-functioning democratic society, requires both that those institutions are genuinely accountable to their electorates and that they enjoy the broad support of citizens. Does the European Union meet this test? It is certainly the case that the mechanisms for ensuring that European Union institutions are accountable to EU citizens, especially concerning their legislative functions, are complex and not well understood. This paper seeks to describe them. In so doing it asks whether there is indeed a 'democratic deficit' in EU decision-making and suggests ways in which, particularly in the UK context, public understanding and confidence in the EU might be improved.

Background

All systems of representative democracy require the executive and legislative arms of government to be accountable to their citizens through regular elections and the free flow of information. Amongst the 28 EU Member States the precise form of governing institutions varies, but all are democracies in which the governments are accountable to their national parliaments.¹ The European Union itself is not a state, nor is it a straightforward inter-governmental organisation like the UN. It is a treaty-based association of 28 Member States through which the Member States have created supranational institutions with powers to make binding laws and (in some

cases) to execute agreed policy. The Treaty on the European Union specifies that the functioning of the Union shall be founded on representative democracy, with citizens being represented directly by the European Parliament and indirectly by their national governments accountable to their national parliaments.² Decisions must be taken as openly and as closely as possible to the citizen.

Law-making and accountability

Many EU decisions - notably on foreign policy, tax policy, strategic direction and treaty amendments - are reached by consensus among the 28 national governments. In this context, each Member State government wields a veto and is accountable to its own national parliament for the position it adopts. However, when making legislation in many other policy areas, decisions are made jointly by the Member States and members of the European Parliament using majority voting. The way accountability works in this context is described below.

In addition to the European Council, which decides the strategic agenda, there are three institutions primarily involved in making legislation under what is known as the Ordinary Legislative Procedure. These are the European Commission which, in most policy areas, has the sole right to make legislative proposals, and the Council and European Parliament which jointly enact legislation on the basis of the Commission's proposals. The institutions are assisted by an Economic and Social Committee

¹ This is supplemented in some cases with direct accountability to citizens, e.g. where a President with executive powers is directly elected

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=EN> Article 10

and a Committee of the Regions acting in an advisory capacity. The roles and decision-making

procedures of the institutions are described in the table below.

Institution	Membership	Legislative Function	Decision procedure
European Council	28 Heads of State or Government	Decides strategic agenda	Consensus
Council	28 Ministers, one from each Member State	Co-decides legislation with EP	Qualified majority of at least 16 Member States representing at least 65% of EU population
European Parliament (EP)	751 members elected directly for 5-year terms	Co-decides legislation with Council	Simple majority
European Commission	28 Commissioners, nominated by European Council and endorsed by EP for 5-year terms	Makes proposals to Council/EP. Makes implementing rules when delegated powers by Council/EP	Simple majority ¹

Each of these institutions is accountable to European citizens in its own way. The **European Council** sets the Union's strategic agenda and its priorities. It also appoints the Commission (see below). Members are the presidents or prime ministers of the 28 Member States, all of whom are directly accountable either to their national parliaments or to their electorates, together with their own president and the President of the Commission. In the UK, the Prime Minister has traditionally reported back to the House of Commons as soon as possible after every meeting of the European Council. In most cases decisions are made by consensus, so every member has the ability to block a measure that would be unacceptable to his or her country.

The Council is composed of a Minister from each Member State. The Council meets in different formats (e.g. agriculture, transport, economic and financial affairs) and the ministers attending any specific Council meeting will normally come from the relevant ministries. The Council's task, alongside the European Parliament, is to agree detailed legislation, and each minister's responsibility is to ensure that that legislation is in accord with his country's interests and objectives. In turn, each minister is accountable to his own parliament according to the agreed procedures in his country. In the UK, the system of parliamentary scrutiny of all EU proposals

ensures that Parliament is informed both of proposals emerging from the Commission and of changes as they progress through the legislative process. This enables Parliament to call the relevant minister to explain and account for the Government's negotiating position throughout the negotiation. Other Member States have different arrangements for ensuring parliamentary scrutiny of EU legislation.

The **European Parliament** has 751 members directly elected in the 28 Member States every five years. Its role is to adopt legislation in agreement with the Council on the basis of Commission proposals. It takes decisions by simple majority and its members are directly accountable to their voters. In addition to co-deciding legislation, the European Parliament is jointly responsible with the Council for the EU budget and has a role in the appointment of the Commission and subsequently calling it to account (see below). The European Parliament does not have a right to propose (as opposed to co-deciding) legislation: that right belongs to the Commission.³

³ Article 225 of the Treaty on the Functioning of the EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>
It does however empower the EP to formally request the

The **Commission** is currently composed of one member from each Member State (though there is provision to reduce this number should the European Council unanimously so decide). The Commission has a number of executive functions, including managing the EU budget, enforcing competition law and policing Member State implementation of EU laws. Its primary legislative role is to make proposals on which the Council and European Parliament will decide.⁴ Its role is defined by the Treaties and (like the other institutions) its actions are justiciable before the Court of Justice of the EU. The Commission's President is nominated by the European Council and elected by the Parliament. Its members are appointed by the European Council on the basis of nominations by Member State governments, with the consent of the European Parliament. The Commission as a body is responsible to the Parliament which has the right to adopt a motion of censure of the Commission at any time, in which case the Commission is obliged to resign. Indeed, the Santer Commission was dismissed in this way in 1999, and the Parliament has on several occasions used its leverage to prevent the appointment of Commissioners that it deemed unsuitable. Its President participates in all meetings of the European Council and is thereby bound into its decisions.

Additional accountabilities

In addition to the above arrangements, the Treaties and their protocols lay down procedures for ensuring that national parliaments are informed of all relevant documents, including legislative proposals, green and white papers and the Commission's annual legislative programme, as well as encouraging inter-parliamentary co-operation, including with the European Parliament. This enables national parliaments to play a proactive role when they choose to do so (see below). Protocol 2 provides a process (known as the 'yellow card') whereby national parliaments may communicate to the institutions a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity (which, along with proportionality, is a legal requirement). Where more than a third of national parliaments deliver reasoned opinions that a draft measure does not comply with subsidiarity the measure must be reviewed.

Is there a democratic deficit?

The arrangements described above illustrate a robust chain of accountability from those who make the decisions within the EU to the electorates in the Member States. In certain respects – for example the double lock of co-decision between the directly elected Parliament and a Council accountable to national parliaments – it is more robust than some national parliamentary arrangements. The EU's legislative processes are undoubtedly complex, reflecting their innovative – non-state but supranational – nature, but the institutional machinery does not, in itself, justify the perception of a 'democratic deficit'.

Yet, as noted, that perception persists - which in turn undermines public confidence in the Union. For example, the latest Eurobarometer survey (from Autumn 2014) shows that some 31% of all EU citizens trust the EU and some 52% claimed they understood how it worked. Comparable figures for the UK are 26% and 50%.⁵ Even if trust in national governments is not much different (29% for all EU citizens, 31% for the UK), this suggests there is much to be done to improve public understanding of the EU and to develop confidence in it.⁶

The perception of a democratic deficit, in the UK at least, appears to be founded on five assertions in particular: that the Commission has too much power for an unelected body which cannot be voted out of office; that national ministers can be outvoted in the Council; that the EU continues steadily to ratchet power from national parliaments without the specific consent of voters; that the UK has little influence in Brussels; and that national parliaments have insufficient influence on EU decisions. The following paragraphs consider whether these criticisms have merit.

The Commission, and notably its right to propose legislation, is too powerful for an appointed body whose accountability to Union citizens is indirect.

It is true that the Commission is 'unelected'. However, replacing the current arrangements with an elected Commission or giving the European Parliament the right of proposal would mark a major shift in power towards Brussels and away from the Member States. An elected Commission would perhaps start to acquire

Commission to submit appropriate proposals.

4 A small number of instances are defined in the Treaties whereby the initiative to make proposals rests with the Council (e.g. on Own Resources and the Multi-annual financial framework) but these are rare.

5 http://ec.europa.eu/public_opinion/archives/eb/eb82/eb82_uk_uk_nat.pdf

6 Ibid.

the democratic legitimacy of a 'Government of Europe', being in a far stronger position from which to challenge the Council on the basis of a popular mandate. Equally, giving the Parliament the power to propose, as well as co-decide, legislation would strengthen its role at the expense of the Member States and their national parliaments.

In reality, the present arrangement whereby the power of proposal is vested in a body that is required by the Treaties to 'promote the general interest of the Union' and is accountable to the two main institutions representing European citizens might be thought to offer a good balance. In exercising its power of proposal the Commission is moreover effectively obliged to consider what Member State governments and the European Parliament think: any proposal which fails to appeal to both the Parliament and the Council will never reach the statute book. In practice, the bulk of proposals reflect requests by the European Council, the Council and/or the European Parliament. But there may nevertheless be a case for developing further powers for national parliaments to stimulate new proposals as well as to demand that proposals should be withdrawn or recast (see below).

National ministers can be outvoted in the Council.

Under qualified majority voting, it is indeed possible for individual Member States to be outvoted. However, majority voting is central to decision-making in all democratic institutions, not least the UK Parliament itself. The threshold for a majority – 16 countries representing at least 65% of the EU population – is high, and provides a direct relationship between countries' voting power and the number of citizens a government represents. The pooling of parliamentary sovereignty through majority voting so as to gain the benefit of a single EU-wide set of rules is at the heart of the single market project, the EU's most prized asset. The Single European Act, negotiated by Margaret Thatcher and ratified by all Member State Parliaments in 1986, established that approach, to the benefit of EU citizens ever since.

The EU continues steadily to ratchet power from national parliaments without the specific consent of voters.

The EU can acquire new powers only by unanimous agreement of all its members, according to their separate constitutional requirements. The UK is a representative democracy, and with the exception of the 1975 referendum, it has been left to successive

governments to negotiate Treaty changes, and to successive parliaments to ratify them. The European Union Act 2011 moreover determined that any future EU Treaty change which involved a further material transfer of sovereignty from the UK to Brussels would be trigger a referendum. The present Government is committed to an in-out referendum, even in the absence of such a further transfer. So this charge – which is really levelled against Britain's own constitutional arrangements rather than the EU – is being addressed. Meanwhile, it is worth noting that some allegations of the extent of EU infiltration of national prerogatives are grossly exaggerated. According to a House of Commons report of January 2015, only 13.2% of Acts of Parliament and Statutory Instruments adopted by Westminster between 1993 and 2014 were EU-related.⁷

The UK has little influence in Brussels.

This is widely believed in Britain, and it is true that in recent years the number of British staff within the EU institutions has dwindled (partly for lack of applicants) and UK power in the EP has diminished (e.g. the absence, or virtual absence of British representation in the main centre-right and liberal groups, and voters' decision to elect more UKIP members whose very *raison d'être* is not to co-operate). Despite all this, the UK has been highly successful at a strategic level in securing its key goals of the single market, enlargement and economic policies based on free and open markets, whilst excluding itself from policies that it dislikes, such as economic and monetary union and Schengen, and obtaining the right to pick and mix in the area of justice and home affairs. At the more detailed level, publications such as the British Influence Scorecard and the previous Government's review of the Balance of Competences indicate widespread satisfaction amongst British stakeholders at the outcome of EU negotiations.⁸

National parliaments have insufficient influence on EU decisions.

National parliaments have a central role in holding their governments to account for the positions they adopt in Brussels negotiations. In most Member States the public sees the national parliament, rather than the European

7 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07092>

8 <https://www.gov.uk/review-of-the-balance-of-competences> and <http://www.britishinfluence.org/scorecard>

Parliament, as the main instrument through which they are represented. Equally, national parliaments are seen as the best forum for focusing public debate on important political issues, including European policy. National parliaments thus have a key part to play in ensuring effective democratic accountability of the EU. The House of Lords EU select committee report on the role of national parliaments in the EU insisted that ‘the effective involvement of national parliaments is fundamental to ensuring that there is accountability, and legitimacy, for the actions of the Union,’ and made a number of recommendations for improving the British parliament’s influence, many of which are reflected below.⁹

The Westminster Parliament has a well-established system for scrutinising EU documents. However, a recent report by the Centre for European Reform has highlighted weaknesses in the way this is operated, especially by the House of Commons, with the result that Westminster’s oversight of ministers’ involvement in EU policy-making and the visibility of the issues to the British public are diminished.¹⁰ The report identifies major scope for enhancing Parliament’s role and making more effective the accountability of ministers for the positions they take in Brussels. The report proposes a 10-point plan to strengthen Westminster’s oversight of EU policy and spread EU business more equally among MPs. The proposals include the whole House electing the Chair of the Commons European Scrutiny Committee, linking the expert departmental select committees to the European Scrutiny Committee by each appointing a *rappporteur* on EU issues, ensuring more time is allocated on the floor of the House to debate EU issues, and holding more plenary debates with the Prime Minister before European Council summits. There is also an overwhelming case for greater Parliamentary engagement in influencing the pipeline of Commission legislative proposals upstream (i.e. before the proposals are formally tabled). Adopting such measures could significantly improve Westminster’s effectiveness and influence, at the same time bringing more

transparency to the issues subject to the debates.

Whilst Westminster does seek actively to influence the debate in Brussels – the House of Lords in particular has a good track record – there is undoubtedly scope to increase that influence, not least by taking advantage of the early consultation on Commission green and white papers so as to affect policy before it is firmed up. The staffing of its Brussels office would need to be significantly increased if it were to match that of other Member States’ parliaments such as Germany; the UK Parliament currently has three staff based in Brussels, compared to 18 from the German Parliament.¹¹ Westminster has also utilised the ‘yellow card’ procedure on several occasions, in company with other national parliaments, most successfully on the ‘Monti II’ proposal on the right to strike. The House of Lords EU Select Committee has proposed to fellow Parliaments the introduction of a ‘green card’ whereby national parliaments would take initiatives to encourage the Commission to propose legislation they consider desirable.¹² Consultations with the European Parliament and with other national parliaments, especially through the Conference of Parliamentary Committees for Union Affairs (COSAC) offer opportunities to engage and influence. There might be a case for developing the powers and the role of COSAC, perhaps creating a new permanent institution in Brussels to represent the national parliaments collectively.

Effective democratic control also requires the European Parliament to be responsive to European electorates. This varies widely across the Union. Relatively low turnout in some countries (35.6% UK, 42.6% EU average for the 2014 EP election) suggests voters are not strongly motivated by the EP elections.¹³ And the 2014 results in the UK, where the most seats were won by UKIP and the most lost were by the Liberal Democrats, indicate that the electorate cast their votes more according

9 <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/news/eu-national-parliaments-report-published/>
10 *A ten point plan to strengthen Westminster’s oversight of EU policy*, Agata Gostyńska-Jakubowska, Centre for European Reform, ?? 2015:
<http://www.cer.org.uk/publications/archive/policy-brief/2015/ten-point-plan-strengthen-westminsters-oversight-eu-policy>

11 Referred to by the Minister for Europe, Rt. Hon. David Lidington MP, in evidence to the European Scrutiny Committee, House of Commons, 2013, cited para. 38: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/109/109.pdf>

12 <http://www.parliament.uk/business/lords/media-centre/house-of-lords-media-notices/2015/june-2015/lords-eu-committee-launches-green-card-pilot/>

13 For comparison, UK 2015 general election turnout was 66%. 2014 EP election turnout was 90% in Belgium and Luxembourg.

to the parties' global views on the UK's EU membership than on their effectiveness in exerting influence within the Parliament.¹⁴

Such evidence suggests a lack of interest by voters in the effectiveness of Members' work in the EP. This is perhaps explained in part by the current state of debate in the UK about the EU more generally, and indeed by the lack of informed debate about the EU over many years. However, the absence of a strong link between MEPs' and the parties' actions in the EP and their prospects at EP elections cannot be healthy. Responsibility for improving the visibility of MEPs and how they are performing in the European Parliament rests with themselves but also with the political parties under whose banner they were elected. The public's interest in the role of the European Parliament and the part played by individual MEPs, particularly local MEPs, inevitably depends on the information they are given about those roles. This is clearly a significant challenge in the UK context but there appears to be ample scope for the major political parties in the UK to improve their performance and make a difference.

Conclusion

The mechanisms for ensuring that decision-makers within the EU are accountable to European electorates are innovative but robust. Insofar as there is a democratic deficit it relates more to lack of public engagement and understanding than it does to formal institutional structures. Public support and understanding of the EU is not well embedded. There is ample scope for improving the connections between citizens and the EU institutions, for national parliaments to play a greater role in influencing EU developments and for political leaders to enhance the visibility and understanding of the European Parliament and its members – and indeed the EU as a whole – to the public.

14 For comparison of the two parties' voting records in the 2009-2014 Parliament, see: <http://blogs.channel4.com/michael-crick-on-politics/eu-voting-records-ukip-lib-dems-compare/3867>.

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