



Statewatch submission to UK House of Commons European Scrutiny Committee inquiry into democracy and accountability in the EU and the role of national parliaments

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Background

Statewatch monitors justice and home affairs and civil liberties in the European Union and was founded in 1991. It is one of the primary sources of information for civil society on new measures and practices on these issues and has regularly submitted evidence to the House of Lords Select Committee on the European Union and the European Parliament. Statewatch has submitted eight complaints to the European Ombudsman against the Council on access to documents and has won seven of these (one is outstanding).

What are the underlying reasons for the apparent "disconnection" between national electorates and the EU?

One of the obvious reason for "disconnection" is the "democratic deficit" that is, the lack of powers of national parliaments and the European Parliament. On EU matters the ultimate arbiter should be the European Parliament which should have the power to reject a proposal from a Member State, the Council or Commission at first reading. It should also have the power to initiate proposals in all areas of EU law.

In reaching its decisions the European Parliament should clearly be seen to have taken into account the opinions of national parliaments and civil society. This would help the process of connecting the different actors and levels concerned by the decisions to be taken.

Another reason can be found in the fact that there are no European political parties and no clear "European" agenda put before the electorates at the time elections to the European Parliament take place. The elections in the various Member States tend to be conducted around national issues and not European ones. It should also be noted that the extreme complexity of decision-making and rule-making at the level of the European Union in a wide variety of opaque fora and a variable inter-action with actors at all levels in the Member States means that the EU political process as such lacks visibility for the national electorate as well as a sense of immediacy.

Improvements to the EU Treaties concerning all these issues should be placed on the agenda of the upcoming "Convention" due to discuss possible amendments to these Treaties.

National electorates are also disconnected from trans-national institutions more generally, because of the proliferation of "global" institutions like the WTO. It is shocking that the European Parliament still has no powers to be consulted on EU trade treaties, and the national parliaments have little role either. The "Convention" should examine this issue as one of its top priorities.

How can decision-making be made more open and governments more accountable for the decisions they make in the Council? Is it essential for a more open and accountable EU that the Council meet in public when legislating?

It is clearly desirable that the Council, which is the most powerful of the three Brussels institutions, should make its decisions in public. But what is really arguably really essential for meaningful accountability is that the process of decision-making in its various stages is subject to public scrutiny. In other words it is vital that full access to documents prior to the adoption of measures is assured and that and a more meaningful and timely role for national parliaments and civil society is adopted.

The Council has not changed its rules of procedure regarding public debates since 1993. Public meetings of the Council remain very much the exception. The internal Council rules can, and should, be amended as soon as possible to provide for an increasing number of public debates, leading towards a presumption of public debates at all Council meetings unless a fully justified case for holding part or all of a meeting in confidence can be made out, according to binding rules which should be agreed on this subject. But it would also be useful to underpin such a development with further openness requirements in the Treaties, which would compel the Council to move toward public debates as the norm.

One crucial issue that the "Convention" to review possible Treaty amendments should address is the power for the EU to adopt legislation on "freedom of information", not just "access to documents". More broadly, the Treaty should set out powers for, and require the adoption of, general rules concerning "European administration", as recently advocated by the EU Ombudsman and the European Parliament. This would govern such issues as binding rules for public consultation before adoption of proposals or measures, whether administrative or legislative measures.

What should the role of referendums be in the EU? How should the EU respond to national referendums, and could there be a role for Europe-wide referendums?

While referendums allow for citizen participation they are not capable of dealing with more than simple questions (Yes or No). We think the role of referendums is limited and cannot deal with the substantial, and often complex, issues which need to be resolved. On the other hand it is worth exploring whether citizens initiative should be instigated at the level of the EU which enable citizens to initiate legislation in circumscribed circumstances and also procedural routes which would enable (a substantial group) of citizens to challenge legislation once adopted.

Would election of the Commission or the President of the Commission either directly or by the European Parliament (a) be appropriate or (b) contribute to reconnecting electorates with the EU?

Addressing the "democratic deficit" requires that the European Parliament be given the full powers of a proper parliament. One of the new powers which it could be given is the election of the President of the Commission and the concomitant power to dismiss the President on a vote of no confidence. This power could potentially reconnect electorates with the EU since they could see a personalised outcome of their vote for the European Parliament. Similarly, the European Parliament should be given the power to choose, or at least approve, the Council Secretary-General, given the importance of his role as the High Representative for the EU's Common Foreign and Security Policy.

Should there be any new institutional arrangements to give national parliaments a more important role in the EU, such as the second Chamber proposed by the Prime Minister or involvement of national parliamentarians in the Council? [The Committee will take account of the results of the Lords Committee's inquiry into the second Chamber proposal]

A second Chamber would undermine the authority of the directly elected European Parliament and directly elected national parliaments. A second Chamber comprised of indirectly-appointed national MPs would risk attracting second-rate talent and might well be biased towards government supporters. Moreover, it would add an additional layer of complexity to an already top-heavy institutional and decision-making structure.

Governments are already able to defend their interests at EU level through the Council and the European Council. Additionally, it will not be possible for a part-time chamber to scrutinise the large volume of EU legislation and activity effectively; and if a second chamber were full-time, its members could not perform the national job which they were principally elected to do by national voters.

It is hard to see how national parliaments could be "involved" with the Council.

National parliaments should have a more important role in the EU but this should be effected by efficient national scrutiny procedures and the obligation of national governments, the Council, the Commission and the European Parliament to formally take account of their views (see below).

What changes are needed to the EU's legislative process to facilitate democratic scrutiny before decisions are made? For example, is there adequate consultation at early enough stages; and should there be tougher rules on allowing time for scrutiny by national Parliaments?

Scrutiny in our view concerns both parliaments and civil society because both have a role to play in democratic decision-making. Parliaments should be the point of contact between national governments, the European Commission and the Council on the one hand and civil society on the other.

Citizens and civil society can directly relate to elected parliaments. It is our view that the parliamentary scrutiny timetable for all new measures should include a public deadline for the submission of the views of citizens and civil society. The same should hold for the European Parliament as well. Such timetables should assume that proposals and background documents are available to civil society in sufficient time for them to consult and reach a view. This role for civil society to comment on pending proposals and to engage in public debate in that regard would not interfere with the formal political process nor with the responsibilities of the various formal institutions in that regard.

Reports by national parliaments and the European Parliament should list evidence submitted and make it available. This would ensure that the views of citizens and civil society are taken into account - and if they are not, or not even addressed, then this will be clear too.

The issue of parliamentary scrutiny is not simply a question of the time allowed although it is clearly important that sufficient time is available. Moreover, any time-limit should be extended if a parliament indicates that it wishes to conduct a deeper investigation or that it has not received satisfactory responses from government ministers. This will entail a revision of the Protocol on the role of national parliaments.

More important is the status of a scrutiny reserve. First, there have been a number of occasions, in the field of justice and home affairs, where measures have not been sent over to parliament for scrutiny. It appears that the Home Office has discretion to decide which proposals are sent for scrutiny. In our view parliament should automatically be informed of all new measures and should be formally consulted on all unless it indicates otherwise. This removes Home Office discretion in the matter.

Further the submission of a measure for scrutiny should include a list of all relevant background

documents (that is, all documents from Council working parties and all documents at each stage of the Commission's considerations). Copies of these documents should be made available on request to parliaments.

We believe that scrutiny reserves should have more force and leave less discretion to government to override them. At the very least: i) where a parliamentary report has indicated a strong reservation on a particular point or issue this should be formally communicated to the Council, the Commission and the European Parliament; ii) in its consideration the European Parliament should be obliged to formally record general and specific reserves from all national parliaments in its reports formally.

To ensure effective scrutiny by national parliaments, it would be useful for the upcoming "Convention" to review the existing Protocol on the role of national parliaments, not only to consider extension of the time period for national consideration but to consider the need to set out minimum requirements on the scrutiny of national parliaments. Alternatively, due to understandable sensitivities about the prospect of the EU Treaties governing national parliamentary procedures, such minimum requirements could be agreed in the form of a Resolution of the EU heads of state or government, which the EU institutions should be tasked to respect. Such a measure would increase public confidence that EU proposals will receive effective scrutiny by national parliaments.

There should be a secretariat tasked with the specific role of relaying relevant proposals to national parliaments, supervising the application of the Protocol on national parliaments, assisting national parliaments with inquiries about EU matters and conveying the views of national parliaments to the EU institutions and bodies.

As regards the European Parliament it is a matter of the greatest concern that reports concerning Title VI of the TEU (policing and criminal law) and Title IV of the TEC (immigration, asylum and civil law) are not properly considered by the Council. First, it appears to be the Council's practice to refer reports from the European Parliament to the working party of officials responsible for drafting the original report. It is questionable whether officials at this level should be given this task. Moreover, as the Council often views the European Parliament's opinion as a legal formality, the parliament's report is often passed to the Council when a proposal has all but been agreed. In these circumstances it is highly unlikely that officials, at working party level, will introduce substantial amendments. Also, the Council plays no regard to the rejection of proposals by the European Parliament, even where the vote against is by a large margin, for example concerning recent proposals on irregular migration.

When Statewatch requested copies of the reports on the Council's consideration of European Parliament reports concerning Title VI of the TEU since 1 May 1999 (some 20 plus reports) the Council were unable to locate the documents.

It should be obligatory for the Council of the European Union to properly consider the opinion of the European Parliament and to make reports detailing its considerations of this opinion available to the parliament and to the public.

Could national parliaments play a greater role in informing the public about the EU and its activities, and in channelling the public's views to EU institutions?

We would phrase it differently. What can parliaments do to ensure that citizens and civil society can obtain access to proposals being considered by parliamentary committees and how can they make their views known to these committees (see above). Voluntary groups and NGOs play a critical role not just in making their views known to parliaments but, just as importantly, disseminating information and knowledge to their constituencies and to the public in general.

Again, the forthcoming "Convention" could address the relationship between civil society and the EU, both directly and indirectly when national or sub-national parliaments address EU affairs.

What is the potential contribution of delimitation of competencies, subsidiarity and variable-speed Europe to reducing any "disconnection" between electorates and political institutions? Would a clear statement of the EU's purpose help? What impact will enlargement have?

A variable-speed Europe as under the Schengen agreement (before the Amsterdam Treaty came into effect on 1 May 1999) or under the post-Amsterdam Articles 43-45 of the TEU allow a number of member states to progress ahead of all 15 acting together. However, this makes for a confusing picture for the citizens let alone NGOs trying to understand the decision-making process.

Cooperation between two or more member states where a common interest suggests cooperation can be positive. But cooperation, as under Schengen, undertaken by large member states is too often in practice intended to set the future direction for all 15 member states. This can increase the "democratic deficit" when non-participating states are expected to adopt the decisions and practices of a small number of states at a later date.

Another complicating factor is the various treaty opt-outs.

A delimitation of competencies could play a role in ensuring that the Union legislates only within specified boundaries. However, the experience of states with very rigid distinctions between central and sub-central levels of government is that such a delimitation will be difficult to agree and will inevitably result in protracted legal conflict. It may also prohibit the central level from acting in areas which it would be best equipped to deal in. Member States will inevitably try to duplicate distinctions within their internal constitutional order which might not be relevant in the context of the EU, which might not be considered appropriate by other Member States (cf the German criticisms of adoption of consumer law at EU level), or which insist upon an allocation of powers which has not kept pace with technological developments and which is out of step with the allocation in most federal states (cf the German allocation of television regulation to the sub-central level, which some believe should be replicated at EU level despite the development of cable and satellite broadcasting and the central-level regulation of TV in much larger federal countries like the US and Canada).

It would be preferable instead to consider a modest extension to the existing list of areas which the Union is specifically prohibited from legislating in (for example, the organisation of health care systems and the content of education), where a case is clearly made out for such additional prohibitions, keeping in mind that it is unrealistic to try and ring-fence such areas from any EU influence whatsoever (cf. the European Court judgments on cross-border access to health care). The most important method of restraining Union action should remain the subsidiarity principle.

The principle of "subsidiarity" plays a valuable role in ensuring that the Union does not legislate in areas unless they are better dealt with at EU level than national (or sub-national) level, and it would be worthwhile for the forthcoming "Convention" to examine methods of clarifying this principle and ensuring its application in practice.

As for the "purpose" of the EU, to a large extent, the EU Treaties already state a number of goals and objectives for the EU. It may be questioned whether these could be updated, and in particular whether it is still necessary to commit the EU to "an ever closer union" in light of the considerable extent of integration already achieved.

At this point, it is difficult to predict what effect enlargement will have on these issues.

What contribution can be made by regional and local government and devolved institutions in the UK and elsewhere, and should the EU have any new institutional arrangements in this respect?

Regional and local government should contribute to policy-making at national and EU level and should have the same opportunity to make submissions as civil society.

Devolved institutions raise a different issue. The powers in Scotland are different to those in England and Wales. The Scottish Executive has the right to be represented at meetings of Councils of Ministers and EU Summits (as do the German Lander). It is our understanding that this right is not exercised by the Scottish Executive though it is exercised by the Lander in Germany.

The "Convention" to be set up before the next IGC should consider this issue in detail. In particular, there is a strong case for strengthening the role of the Committee of the Regions, for example to extend its role to the areas of EU criminal law and policing (where regional institutions play a large role in many Member States) and to require the Council and Commission to consider the Committee's opinions and to state the reasons for adopting or rejecting the Committee's views.

Also, there is a strong case for considering a binding Treaty measure on the consultation of local and regional governments in the EU where EU proposals are relevant to their responsibilities. On issues which concern them, such governments should have consultation rights comparable to those currently accorded national parliaments, and should also receive the benefit of any 'upgrade' to the rights of national parliaments (see above). There should be a secretariat tasked with the specific role of relaying relevant proposals to sub-national governments, assisting such bodies with inquiries about EU matters within their competence and conveying the views of sub-national governments to the EU institutions and bodies. This responsibility could be awarded to the Committee of the Regions.

What is the role of the European Parliament in promoting a more democratic EU? Is there scope for more co-operation between the European Parliament and national Parliaments?

Yes. Within our field of justice and home affairs in the EU scrutiny reports from all national parliaments should be sent to the relevant European Parliament committee and placed on the public record.

Where a substantial issue arises of concern to both a number of national parliaments and the European Parliament it might be considered whether a joint "inquiry" should not be held before the adoption of positions.

How should the debate on the future of Europe be conducted, e.g. should there be a convention, and if so, how could it be made representative and how should it operate?

There should be a convention comprised of EU governments, the European Commission, national and European parliaments. The convention's proceedings should be open to the public and all documentation should be made available on the internet (including agendas and outcomes) - this would enable civil society to follow the proceedings and to submit views where appropriate.

Dialogue between the Convention and civil society should not be restricted to a handful of hand-picked groups, as this would narrow the range of views which would be conveyed to the EU institutions and risk further remoteness from the public.

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