

**THIRTY-THIRD REPORT FROM THE HOUSE OF COMMONS EUROPEAN
SCRUTINY COMMITTEE**

SESSION 2001-2002

**DEMOCRACY AND ACCOUNTABILITY IN THE EU AND THE ROLE OF
NATIONAL PARLIAMENTS**

**RESPONSE FROM THE SECRETARY OF STATE FOR FOREIGN AND
COMMONWEALTH AFFAIRS**

General

1. The Government is grateful to the Committee for its comprehensive and considered Report and welcomes the Committee's interest in expanding its involvement and input into EU processes. The Government strongly believes that strengthening the role of national parliaments in the EU institutions will help improve democratic legitimacy and bring the EU closer to its citizens. These issues feature on the agenda for the Convention on the Future of Europe, in which the Government and representatives of both Houses of Parliament are fully engaged.

INTRODUCTION

Democracy and National Parliaments in the EU

Whereas at home their [national governments'] legislative proposals require the assent of their national parliaments, in the EU they [national governments] act as a legislative chamber on their own. However, individual Council members acting collectively and doing so largely in secret cannot effectively be held to account by another organisation. (para 14)

2. The Government shares the Committee's concerns about the lack of transparency in Council proceedings. We have argued for the principle of opening up Council meetings to the public. The Government therefore welcomes the first step of the agreement reached at the Seville European Council in June 2002. This requires the opening up of the initial and final stages of Council debates on acts adopted under the codecision procedure.

OPENNESS

The Council of Ministers

We...welcome the fact that the UK Government is in favour of the Council meeting in public when legislating. (para 21)

We share the Government's view that all the Council's legislative proceedings should be in public. What we regard as essential is that sufficient takes place in public for it to be clear what line has been taken by each Member State in the proceedings and where responsibility lies for the decisions made. (para 23)

We emphasise that confining the public meetings of the Council when legislating to areas subject to co-decision would be totally unacceptable. (para 24)

The European Council will also need to meet in public when making decisions on legislation. Council documents will need to be made available in unexpurgated form, and especially without the policy stances of Member States being blanked out. The system whereby the Council agrees without discussion 'A points' already negotiated by officials in COREPER will need to be reconsidered. (para 25)

We...see no reason why the Council should discuss Court of Auditors reports in private. While it will often be appropriate for the Council to meet in private, the onus should be on the Council to justify doing so. (para 26)

Support for the Council meeting in public for most or all of its legislative sessions will be a litmus test of governments' real attitude towards increasing democracy and accountability. If they do agree to it this will show that they are serious about increasing accountability and reconnecting citizens and EU institutions; if they do not so agree, it will be evident that they are not serious about it. (para 27)

3. As mentioned above, the Government warmly welcomed agreement at Seville to allow public access to particular elements of Council meetings. The Government supports as broad an application of the new Seville regime as possible, and continues to advocate the Council meeting in public for all legislative proceedings, not just co-decision.

Other Aspects of Legislation

We emphasise the need to change the system whereby legislation agreed in COREPER is approved without discussion in the Council if public sessions of the Council are to be meaningful. (para 29)

We would support this [new ways of monitoring and controlling the exercise of the Commission's executive role] if it resulted in more open supervision of the Commission's exercise of its powers. (para 31)

4. The Government agrees on the importance of public sessions of the Council being meaningful and substantive discussions. However, in practice the number of items on the agenda for Council meetings is usually too great to enable Ministers to hold substantive discussions on every issue. For that reason, the convention of "A points" is used by the Council for uncontroversial items that have been discussed by officials at Coreper, on Ministerial instruction. The Government is, however, open to suggestions for making the current system more transparent, without increasing the burden on the Council to an unsustainable level.

THE EU'S LEGISLATIVE PROCESS AND SCRUTINY BY NATIONAL PARLIAMENTS

Time for scrutiny by national parliaments should be seen not as an optional add-on but as a fundamental aspect of accountability. Therefore, we do not regard building some time into the system for scrutiny by national parliaments as unreasonably slowing down the legislative process. (para 35)

We advocate either incorporation of national scrutiny reserves into EU procedures or a minimum length of time between consideration of a text by COREPER or publication of a new text and its agreement by the Council, in either case with tightly-drawn provisions allowing for cases of urgency (which might require unanimity), but we are open to suggestions which would reliably achieve the same effects by less formal means. (para 47)

5. The Government is strongly committed to the effective scrutiny of EU business by national parliaments. It welcomes the view of the Committee (30th Report, paragraph 38) that “the general principles on which the European scrutiny system in the Commons operates are largely sound”, and shares the Committee’s interest in further improving the system. The Government is responding separately to the recommendations in the Committee’s 30th Report.
6. More fundamental changes to the decision-making process in Brussels, of the type set out here, are among the proposals being discussed by the Convention Working Group on national parliaments, chaired by Gisela Stuart MP. That Group is looking at ways to enhance the role of national parliaments in the EU. It is also considering suggestions for improving national parliamentary scrutiny procedures, whilst recognising that it is for national parliaments to determine their own domestic arrangements. The Government looks forward to seeing the recommendations of the Working Group and encourages the Committee to ensure its own ideas are made available to that forum.
7. The volume of business and multitude of textual changes in the course of a negotiation make it impossible to impose minimum lengths of time every time a draft text is revised, without unacceptably stalling the negotiating process. The Government endeavours to keep Parliament promptly informed of any significant changes in the course of negotiations. We would be happy to discuss with the Committee better ways of keeping them up to date with developments in the final stages of negotiations.

European Council Deadlines

We emphasise that any deadlines set by the European Council and the timing of the negotiations intended to meet such deadlines must provide enough time for national parliamentary scrutiny in advance of Council decisions on new texts. (para 50)

8. The Government recognises the difficulties that can be encountered, particularly with fast-moving dossiers. The ability to respond quickly to crises is essential to

ensure the Union's effectiveness and credibility when dealing with urgent dossiers. The UK's ability to move flexibly and rapidly is also imperative to ensure we are not sidelined in negotiations.

9. The date of Council meetings often sets the effective deadline for reaching agreement on a dossier. However, the Government is working hard to provide Parliament with sufficient time in advance of Council decisions to be able to scrutinise dossiers effectively and thoroughly. This includes efforts to encourage better timetabling of dossiers to ensure that successive Presidencies comply with the minimum requirements set out in the Protocol on the role of national parliaments in the EU, annexed to the Treaty on European Union. The Government believes that better planning of the scrutiny timetable and improved information flow between UKRep, Departments and the Committee should reduce to a minimum the number of occasions when Ministers find themselves taking decisions to override the Committee's reserves. The Government is grateful to the Committee for accepting more informal methods of information provision.

THE EU INSTITUTIONS

The Presidency

We share the view that the system of six-monthly Presidencies should be replaced. (para 59)

It will be essential to establish parliamentary accountability for an elected President of the European Council, and the joint meetings of national parliamentarians and MEPs proposed below would be a means of doing so. Subject to that, we support the proposal that the European Council should have an elected President with a term of office of two years or more. (para 61)

10. The Government welcomes the Committee's support for a review of the six-monthly Presidency system, as well as the Committee's endorsement of an elected President of the European Council.
11. Reforms to the Presidency system were discussed at the Seville European Council. Although no agreement was reached there, there was "a general readiness to examine the question further, with the proviso that any adjustment to the present system of six-monthly rotation will in any event have to continue to observe the principle of equality between the Member States". The current Danish Presidency is holding further discussions on reform of the Presidency system "with a view to an initial report to the European Council in December 2002". The Convention may also consider more radical reform of the Council, which would require Treaty change, including the idea of team Presidencies and an elected President of the European Council.

The European Council

We see merit in replacing the six-monthly list of Presidency priorities with an annual European Council agenda that relates more clearly to the Commission's

annual work programme. We also consider it essential that any European Council agenda is subject to scrutiny before it is finalised, and that national parliamentarians participate in that scrutiny. (para 65)

12. As noted above, the Seville European Council agreed a number of reforms designed to make the Council work more effectively. “In keeping with the role conferred upon it by the Treaty of defining the general political guidelines of the Union, the European Council shall adopt...a multiannual strategic programme for the three years to come”. The programmes will be drawn up by the Presidencies concerned “...in consultation with the Commission and acting on a recommendation from the GAERC”. The first annual operating programme of Council activities will be adopted in December 2002, with the first multi-annual strategic programme being adopted in December 2003. As with all other decisions taken by the Council, this document will be made available for scrutiny by national parliaments before it is finalised.
13. It will, of course, be important to ensure that this process is properly co-ordinated with the Commission’s Annual Work Programme. We are taking this forward with our partners.

The Council of Ministers

We would welcome a simplified Council structure which gave rise to more coherent policy-making and which would potentially make national parliaments’ task of holding Ministers to account less difficult. (para 66)

Citizens and parliaments are entitled to expect greater professionalism in the organisation of the Council of Ministers. (para 67)

14. The Government fully agrees with the Committee’s recommendations. That is why we have been such strong advocates of Council reform. The Government warmly welcomes the simplified Council structure and other reforms agreed at Seville. They incorporate many of the ideas put forward by the Prime Minister in his joint letter with Chancellor Schröder to Prime Minister Aznar in February. They represent a substantial change in Council working practices and are designed to improve the structure and functioning of the Council in the run-up to enlargement. The Government is keen to see the new General Affairs and External Relations Council (GAERC) fulfil its coordinating role in preparing for and following-up activity in the European Councils. The Government welcomes the on-going discussions on Council reform that are being taken forward by the current Danish Presidency, and looks forward to seeing the initial report at the European Council in December 2002.

The European Commission

We are not in favour of the Commission President being elected. (para 80)

We emphasise the need for the Commission to operate strictly within well-defined parameters laid down by the Council and the EP, and for any political

and legislative powers to be confined to those for which there is a clear justification, as in respect of state aids and competition. (para 82)

We regard it as essential that there be much greater openness about how the Commission decides what legislative measures to put forward and greater scrutiny of that process, with the involvement of national parliamentarians (who could put proposals to the Commission). (para 84)

15. The Government firmly believes in the importance of a strong and independent Commission, whose power of initiative can drive forward agreed policy programmes, and whose implementing powers hold Member States to their legal commitments. The Commission's independence is what enables it to be the real guardian of the Treaties and guarantor of the rights of all. We therefore do not believe it would be sensible to politicise the Commission through the election of its President.
16. The Commission's Annual Policy Strategy (APS) is intended to provide a strategic overview and a planning and programming cycle for EU policies and legislation. On the basis of the APS, the Commission develops its more detailed Legislative and Work Programme.
17. The Government believes that the development of the APS has improved considerably, with significant inter-institutional dialogue and more comprehensive consultation by the Commission now taking place throughout the process. But more could be done, in particular through involving national parliaments. The Government welcomes the Committee's interest in becoming more involved.
18. However, the current planning and programming cycle may change in the coming years. The current Danish Presidency is taking forward discussions in the Council on further Council reform. There are also wider discussions on a full range of institutional issues being discussed at the Convention. All of these discussions may result in decisions which affect the current procedures.

The European Parliament

We regard it as inappropriate for an executive and a democratically-elected parliament to be involved so extensively in secret negotiations over legislation. (para 90)

We believe any extension of co-decision to new areas should be conditional on a change in the present procedure so that it can operate in a way which is both effective and transparent. (para 91)

We endorse the view that strengthening the relationship between the EP and citizens by increasing knowledge of what the EP does will increase its authority and its contribution to democratic legitimacy in the EU. (para 92)

We recommend that there be a critical re-examination of the system currently used in the UK for elections to the EP, in an attempt to reconnect MEPs to constituencies small enough to re-establish a representative relationship with

communities and their electorates, and that the party list system is abandoned in favour of ‘first past the post’ and a constituency-based system in which the electors know for whom they are voting to represent them in a given area. (para 93)

19. The Government welcomes the Committee’s support for more effectiveness and transparency. The Government believes that the European Parliament has a vital role to play in ensuring the democratic legitimacy of the EU. Since its inception at Maastricht in 1992, the co-decision procedure has become the main legislative engine in the EU. For the most part, the Government believes the system has worked well. But there is scope for considering ways to improve the process.
20. The Government recognises the need to strengthen the relationship between the European Parliament and citizens, and warmly welcomes the Committee’s support for increasing knowledge of the European Parliament’s role and functions.
21. The Government has agreed, with its EU partners, certain common principles governing elections to the EP. One of these is that all elections to the EP will be by a proportional system. There are therefore no plans to return to a first-past-the-post system for UK elections to the EP, and no plans to re-examine the current system of closed list proportional elections, which has so far only been used for one round of EP elections.

WHO DOES WHAT

We endorse the principle that the EU should legislate wherever possible with a light touch, leaving as much flexibility as possible to Member States and authorities within them. (para 97)

22. The Government welcomes the Committee’s recommendation and believes that whatever new mechanism is agreed to oversee the principle of subsidiarity should also be mandated to oversee the principle of proportionality.

The Allocation of Powers

A clearer allocation of powers is desirable, especially where powers have been inferred from objectives set in the Treaties, but on its own will have limited impact because of the prevalence of shared powers. There need to be arrangements to review the allocation of powers periodically, with the possibility both of adding new powers and of returning existing ones to the Member States. The principles of *all* powers not transferred by the Treaties to the EU remain with the Member States must be maintained, and it must be made clear that the powers of Member States are not derived from the Treaties; but, subject to that, we see merit in a list of powers from which the EU is specifically excluded. ‘A simpler statement of principles, which sets out in plain language what the EU is for and how it can add value’, as proposed by the Foreign Secretary, would be worthwhile. (para 102)

23. The Government welcomes the Committee's support for the Foreign Secretary's proposal for a statement of principles. We agree that this might include explicitly the principle of conferred powers (ie that the Union shall have only those powers which have been conferred on it by the Member States pursuant to the Treaty). The Government notes the Committee's suggestions for a clearer allocation of those powers. This may be achievable, but it is important to preserve a degree of flexibility to ensure rapid responses to unforeseen demands.

Subsidiarity

We agree with those who have advocated new procedures to enforce the principle of subsidiarity. (para 108)

We believe enforcement of the principle of subsidiarity should be a political matter. (para 112)

We believe national parliamentarians should have a role in determining questions of subsidiarity. (para 113)

If cases are referred for decision by another body, we would favour that body being a political or quasi-judicial arbiter or watchdog. (para 114)

24. The Government welcomes the Committee's support for new political procedures, involving national parliamentarians, to strengthen the application of subsidiarity. The Government supports the creation of a political mechanism involving national parliaments to scrutinise proposals for legislation on the grounds of subsidiarity and proportionality. We note the helpful conclusions of the Convention's Working Group on Subsidiarity, and will continue to work in the Convention to ensure that the final mechanism ensures that the principles in question, and the opinions of national parliaments, will be fully respected by the institutions of the EU. We consider this to be an important step towards preserving the traditions and diversity of the Member States within the EU and ensuring that the EU only legislates when it adds value to the actions of the individual Member States.

'Ever Closer Union'

The reference to 'ever closer union' should be removed from the Treaties. (para 116)

25. The Government will continue to work in the Convention to ensure that the language of the Treaties provides a clear and transparent guide to the policies and objectives of the EU.

THE ROLE OF NATIONAL PARLIAMENTS IN THE EU

National Parliament Vetoes

We do not support the proposal for national parliament vetoes [on EU legislation]. (para 121)

26. The Government welcomes the Committee's recommendation.

A Second Chamber

We conclude that any involvement of national parliamentarians in the EU should make the least possible demands on their time, and should draw on different Members for different purposes in order to spread the burden; forms of involvement not entailing meetings and travel should also be considered. We conclude that meetings of national parliamentarians should be so managed that the representative can consult widely in advance, and should normally have a scrutiny and consultation rather than accountability role. (para 127)

27. The Government notes the Committee's recommendation and reiterates the importance it attaches to enhancing the role of national parliaments in the EU. This is fundamental to improving democratic legitimacy and bringing the EU closer to its citizens – all key objectives for the Government and underlie the discussions at the Convention.

28. The Government encourages the Committee to consider options for developing links with the European Parliament, both formally and informally, as a way of strengthening cross-fertilisation and improving Members' involvement in, and awareness of, the EU issues of the day. The Government recognises, however, the heavy burden already shouldered by many national parliamentarians and emphasises the need for any proposals for involving national parliamentarians more in the EU should be bureaucratically light.

The Convention

We conclude that the Convention format is useful for open debates and for developing ideas and making proposals, but (because of the problem of representativeness) not for making decisions, and we do not regard it as giving parliaments a 'joint constituent power'. (para 130)

29. The Government echoes the Committee's support for the Convention format which, as the Laeken Declaration states, is designed "to ensure that preparation for the forthcoming Intergovernmental Conference is as broadly-based and transparent as possible". The Convention is composed of all the main parties involved in the debate on the future of the Union, including all the candidate countries. In addition, a Forum has been opened up for organisations representing civil society, "in order for the debate to be broadly based and involve all citizens".

30. In paving the way for the IGC, the Convention's task is "to consider the key issues arising for the Union's future development and try to identify the various possible responses". The outcome of the Convention will be presented to the European Council in June 2003. The Government emphasises that the Convention is not a forum for taking decisions; "the final document will provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions".

National Parliamentarians and Subsidiarity

We believe national parliamentarians should have stronger rights than the right of consultation as regards subsidiarity problems. (para 131)

Whatever the method, we favour a system in which national parliamentarians could refer items of legislation to a ‘subsidiarity watchdog’ or other body for examination of compliance with the principles of subsidiarity and proportionality. Meetings of national parliamentarians to scrutinise the Commission’s annual work programme from a subsidiarity point of view could also be of value. (para 134)

31. The Government welcomes the Committee’s endorsement of a substantial role for national parliaments in enforcing the principle of subsidiarity. As set out above, the Government notes the helpful conclusions of the Subsidiarity Working Group and will continue to work in the Convention to ensure that the principles in question, and the opinions of national parliaments, are fully respected by the EU institutions.

Examining Annual Programmes and Agendas

However, we believe consultation by the EP would be too indirect a process if the aim is to reconnect citizens and EU decision-making: national parliamentarians should be involved in discussions directly with the Commission. We welcome the Commission’s proposal for a ‘reinforced culture of consultation and dialogue’, and call for joint meetings of national parliamentarians and MEPs to scrutinise the Commission’s annual policy strategy and work programme, question Commissioners on it and debate it, and would support a similar procedure for the European Council’s annual agenda. (para 140)

32. The Government notes the Committee’s recommendations and welcomes the Committee’s interest in becoming more involved in the development of the work programmes and agendas of the Commission and Council. The Government encourages the Committee to discuss the ideas – particularly regarding discussions with the Commission and joint meetings with MEPs – with other Member States national parliaments; a combined approach might carry more weight.

33. The Government further encourages the Committee to transmit its recommendations to the Working Group on the role of national parliaments, which is discussing ideas to enhance national parliamentary involvement in EU processes.

Joint Meetings of National Parliamentarians and MEPs

We call for joint meetings of national parliamentarians and MEPs to be placed on a more formal basis with a small secretariat and joint organisation by national parliaments and the EP. (para 143)

34. Again, the Government encourages the Committee to discuss this recommendation with other Member State national parliaments, and to transmit

the proposal to the Convention Working Group on national parliaments. Increasing formal and informal contacts between national parliamentarians and MEPs would benefit both. This question is rightly being considered at the Convention.

Scrutiny of ESDP

We support the proposal for regular meetings of members of the defence, foreign affairs and European affairs committees of national parliaments to scrutinise ESDP. (para 147)

35. The Government's view remains that the primary scrutiny role on matters concerning ESDP should rest with national parliaments. The Government notes with interest the views of the Committee on the question of regular meetings between the Committees of national parliaments. This is a matter for the Committees concerned. The wider question of scrutiny matters, and developing greater links between parliaments, is also one of the subjects being considered at the Convention.

Attendance of National Parliamentarians in the Council

We do not support the proposal for national parliamentarians to accompany Ministers to Council meetings. (para 148)

36. The Government agrees with the Committee.

COSAC and the Scrutiny Role of National Parliaments

We would re-define COSAC's main role as assisting national parliaments to improve their scrutiny of government activities in the EU, by sharing best practice and information and acting as a strategic body on behalf of national parliaments. COSAC needs to have a small secretariat to facilitate the exchange of information (e.g. on scrutiny problems, in respect of particular documents or more generally), to monitor activities relevant to national scrutiny (e.g. compliance by the Council with the protocol on the role of national parliaments), and to take up procedural matters of concern with the Council Secretariat or the Commission. (para 150)

COSAC should also draw up minimum standards of parliamentary scrutiny. (para 153)

We shall press for our ideas to be included in that detailed proposal [being drawn up by COSAC]. (para 154)

We encourage the working group to set out its view of what national parliaments should be doing as regards scrutinising government activity in the EU and reconnecting citizens and EU decision-making. It would also be helpful if the Convention asked COSAC to take action to seek to raise the overall standard of scrutiny by national parliaments. (para 155)

37. The Convention Working Group on the role of national parliaments is considering a range of options for greater national parliamentary involvement in EU processes, including strengthening national scrutiny procedures. The possible future role and functions of COSAC are among the ideas being discussed.
38. The Government welcomes the Committee's interest in making COSAC a more effective body and encourages the Committee to pursue its proposals through COSAC, and to highlight them to the Working Group and other Member State national parliaments.

FCO
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