



European Scrutiny Committee

Oral evidence: [Transparency of EU Council decision making](#),
HC 945

Wednesday 20 April 2016

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Members present: Sir William Cash (Chair); Peter Grant; Damian Green; Kelvin Hopkins; Craig Mackinlay; Alec Shelbrooke; Mr Andrew Turner

Questions [1-40]

Witnesses: **Dr Sara Hagemann**, Assistant Professor, European Institute, London School of Economics and **Professor Simon Hix**, Harold Laski Professor of Political Science, London School of Economics, gave evidence.

Q1 Chair: Good afternoon, Professor Hix—it is good to see you back again—and Sara Hagemann. Thank you very much for coming and for your papers in advance. I will ask the first question. The evidence you provided to our predecessor Committee suggested that the vast majority of decisions at Council are taken by consensus—in other words, there were no formal votes against—despite the majority of files being subject to QMV. However, this masks any prior disagreement and negotiation lower down the chain at working group and Coreper level. From your research, how easy is it to identify the positions taken by member states in these preparatory bodies and how are differences resolved?

Professor Hix: You are quite right: the majority of decisions are taken by consensus, which suggests one of several things. First, it suggests that a decision is made in the shadow of a vote when discussions are going on in Coreper, working groups or even at the Council level and they have done a tour of the table. If it is clear that there is a qualified majority in favour of the outcome, the representatives of the member states on the minority side decide not to formally vote against; they either go with consensus or abstain. Under QMV, abstention does not count as a vote against.

In practice, there is a lot more division and conflict inside the Council than we actually get to see as citizens. We get to see the minutes and recording of those Council meetings, some of the proceedings of some working groups—it seems very inconsistent—and the recorded votes that take place at the end of the day.

Q2 Chair: That does not really tell you what has been going on. Am I right in thinking that that is a matter, with all your experience, that really quite worries you?

Professor Hix: It does worry me. If we go back to the Maastricht treaty and the Amsterdam treaty, there was a decision taken by the Governments, particularly in the Amsterdam treaty, that the proceedings of the Council, when acting as a legislative body, would become more transparent. Then they opened up some discussions in the public domain in terms of public debates; there was more access to minutes; more formal recording of votes took place from about 1999 onwards, but that is only one very small proportion of what transparency of a legislative body is. It is more important, if you are a citizen, the media or national Parliaments trying to scrutinise the process, to see what the positions of the Governments are on the dossier.

Compare it, for example, to the European Parliament. After the Commission has made a proposal, which would be the equivalent of the Government having proposed a draft Bill to Parliament, we should be able to see what positions actors take in terms of proposed amendments to the text. We can easily see that in the European Parliament. We get to see what amendments are proposed in Committees, what votes are taken on those amendments; most Committee proceedings on legislation are in the public domain. We get to see exactly who was in favour of what, who were the winners, who were the losers and what the outcome was. That is what happens in any democratic legislature.

I do not see why we should not hold the Council to the same standard; why we should not be able to see which Governments are taking positions on what, what amendments are being proposed and which Governments are in favour of them? In fact, we know that they now share speaking time in the Council, so who is sharing speaking time with whom? Which amendments are co-sponsored by whom? Which ones passed and which ones failed? I do not understand why we are not allowed to see that.

Q3 Damian Green: On that specific point, when I attended Councils—and I attended Home Affairs Councils—it did not strike me as a parliamentary procedure; it felt more like a cabinet sub-committee. I am not quite sure I buy the analogy that this is another public democratic process, because it felt like, on some of the things, you could have a perfectly good democratic process, but you needed to have a discussion in private. You can clearly place Councils on either side of that line but I am sure all the participants feel that this is a private discussion out of which a press release will come.

Professor Hix: I know Sara and I will disagree a little here, so she will come back on this. There is a big distinction between when Councils are acting in executive capacity and when Councils are drafting or amending legislation. This is law, which is equivalent to any other law, that has formally been proposed and is now passing through a legislative process. Yes, it might have felt to you that you were acting like a cabinet working committee but, in legal practice, you are acting as one branch of a legislature when you are passing law. Sure, when they are making executive decisions or, for example, when a Council working group is acting under comitology on the implementation of legislation, we should hold them to different criteria or different standards of transparency. In a democratic system, we hold the executive branch to different standards of transparency than we do a legislative branch and legislative procedures. We should apply that same logic and those same criteria to EU decision-making.

Q4 Chair: Can I put that into a context and put forward something on which I would be grateful for your comment? For example, between 70% and 90% of decisions are taken by officials rather than by Ministers. That appears to have intensified, because 85% to 87% of decisions, as I understand it, are taken informally at first reading through deals with the European Parliament. The discussions between the officials are not open to the public, although, as you say, some minutes and agendas are available, but their content and timing of publication are inconsistent. Is that not the case?

Professor Hix: That is right. First reading agreement means that the Commission has made a proposal, and then it goes to both the European Parliament and the Council. It is then discussed in Coreper; it is discussed in the relevant Committee in the European Parliament. We get to see everything going on inside the Committee in the European Parliament. Then, a trilogue meeting is held between the representatives from the Parliament, normally the Committee chair, the rapporteur and the shadow rapporteurs from Parliament side, and the representatives from the Council, normally led by whichever member state is holding the Presidency of the Council at that time. The decisions and discussions are made behind closed doors; we do not get to see them. It then comes back to Parliament. It is passed by a simple majority vote in Parliament and passed by a qualified majority vote in Council. We do not see anything other than what goes on inside Parliament.

Q5 Chair: Could I take that a tiny bit further in relation to what impact it has on the UK through the European Communities Act 1972? After all, these are the obligations. Once the legislation has been adopted, it becomes UK law through section 2 of the European Communities Act. That is extremely difficult to reverse, if at all. In Westminster, we have Hansard, we have the discussions that go on in Committees; they are on the record, etc. I have checked this with the House of Commons library very precisely. Given that, between 2010 and 2013, as much as 59% of all UK laws and measures are derived from EU obligations—this is confirmed by the House of Commons library—is there any good reason, in your judgment, why the Council should not operate with similar transparency and democratic accountability?

Professor Hix: I absolutely agree with you. I do not see any good reason not to, when it is acting—and I reassert—in a legislative capacity.

Chair: Unfortunately we now have a Division, but thank you for getting us off to a flying start.

Sitting suspended for a Division in the House.

On resuming—

Q6 Kelvin Hopkins: From what Professor Hix has been saying, because it is all so secretive, we do not know whether it is a friendly consensus or the result of horse trading, bullying by larger nations of smaller nations, client states going along with their masters, whoever they might be. None of that we know. In a democracy, when you are speaking about things, these things should be known.

Dr Hagemann: Thank you very much for the invitation to come here. I would like to make a couple of remarks. First of all, the system has changed quite dramatically over the past decade, especially since 2009, when the Council's internal rules of procedure really

changed the culture of negotiations. That came partly as a reaction to the enlargement. The sheer number of people in the room of course changed the dynamics: it could no longer be an informal conversation about consensus agreements. We do see that more decisions are adopted either explicitly by vote, which they have to do in the case of legal Acts, or in the shadow of the vote, as Simon mentioned.

That has had a number of consequences, but not all bad or good; they fall on either side. First, we have seen that the procedures have meant that we have more formal meetings. There is much closer adherence to the rules; there is no longer a *tour de table*; and, when votes are taken, Acts are adopted more readily when a sufficient majority has been found, not necessarily when everyone is on board. Yes, that means that some Governments may not see all their concerns being addressed in the final text of the Act, but this formalisation has also meant that some Governments are more ready to put on record their policy statements, as well as a vote against the majority. They are coming out more explicitly as having concerns or outright disagreement with a text. Previously, they may not have felt that they needed to express that disagreement but had gone along with what the majority consensus resulted in.

It is an important development that we have the records. For example, last week there were a number of Council meetings. You can go in and get the vote sheets. All the Governments have their positions recorded. Last week for example, quite a number of the Governments had concerns with some of the proposals that went through and therefore explained their positions in the voting, in what we call the public statements. That is an important development in terms of transparency. It is not necessarily the case that we are seeing more disagreement than previously, but we now have it on record. Whether this is a good or bad thing is, of course, something that can be discussed, but it certainly means that we are able to get the information about what Governments have actually voted on.

As has been highlighted, this information is not consistent across the Council configurations. We know Councils such as Justice and Home Affairs, Foreign Affairs and a few others have had a culture of traditional diplomacy, let us say. They very much still operate in that atmosphere of negotiations rather than sticking to the formal rules: "Do we have a majority? Yes. Okay, let's move on to the next policy proposal." There are differences between the various policy areas and Council configurations.

We can get more information at the moment than we have had previously, and, from my experience of doing the research in Brussels on this, the EU institutions have a silent desire to move more in that direction. The Council Secretariat very much welcome this kind of formal record keeping, because it helps their work. But the initiative has to be a political one; it has to come from the political level, in order to introduce such drastic measures to enforce the rules that are already partly in place but are simply not always part of the culture of negotiations.

Q7 Peter Grant: Professor Hix, you described in some detail the decision-making process in parts of the Council, for example, and the areas where there is a lack of transparency. Could you elaborate on where that is similar to the system of decision-making in here and where it differs? As we have just seen, Parliament votes on the public record to pass legislation, but policy decisions are effectively taken by the Cabinet, and we do not know what has happened in Cabinet until somebody publishes their memoirs several years later. Perhaps most importantly, we seldom, if ever, know anything about the lobbying,

representations and discussions that go on behind the scenes. Is the process in Europe really significantly less transparent than it is in Westminster, or is it simply that it is less familiar to us because the system we have here has been here such a long time that we have stopped seeing its flaws?

Professor Hix: This is partly because there is a widespread misconception about what the Council is as a body. It is a misconception not just of the public; it is a misconception of national Government officials when working in it. It is still largely perceived as an inter-governmental body, with governmental and executive officials, and therefore as analogous to a cabinet committee or a committee of the executive branch of government.

From my perspective, that is not the case when the Council is passing law. We have a bicameral legislative process where the right of initiative is the Commission, and then we have two branches of the legislature: the Council when acting as legislature and the European Parliament. The analogy there is similar to any other bicameral legislative system, whether it is the House of Commons and the House of Lords, or the Bundestag and the Bundesrat in Germany. In fact, the Council, when acting in that capacity, is probably much more similar to the Bundesrat in Germany, where there are Government representatives acting in the Bundesrat as part of a bicameral legislative process. In that sense, yes, it might feel to Ministers and officials that culturally it is an executive body; it is not an executive body when it is amending and passing law.

Sara is right that we now see a lot more after the fact. Once something has been adopted, we have a lot more sense from some Governments of what actually happened. Some Governments are much more willing to say, “Yes, I went along with the consensus, but I want it minuted that I did not like this or that bit, and, if we come back to this again in the future, these are the things we are concerned about”. Only some Governments do that. We do not see what happens before that. For example, let us say the Commission has made a proposal and, at the end, we see that 10, 20 or 30 amendments have been adopted to this Directive. We see who was in favour and who was opposed to those amendments in the Parliament; we do not see who was in favour or opposed to them in the Council until after the fact. Then we see that some Governments were opposed to some of these things, but we do not see what happen before. I do not see that as being like a cabinet committee; I see it as like a legislature.

Q8 Chair: This is the point. In the legislature as we understand it here in the United Kingdom—and the same will apply in other national Parliaments, generally speaking—there is a policy, which is certainly made in the Cabinet, but then it gets to parliamentary counsel and the Bill is produced. That is where the legislative act is taken. That then goes to Parliament; it goes through second reading and Committee stage; amendments are put forward and the Government respond to those. There is a dialogue and a discussion. It is transparent. It is in Hansard. It is therefore known as to what the positions are as they are taken. First of all, there is the problem of inconsistency, which Sara Hagemann has described, but, above all else, there is the fact that nobody can be absolutely sure from the record exactly what the position is. That is the question that I suspect you are highlighting. Is that right?

Professor Hix: That is exactly right.

Q9 Craig Mackinlay: We have heard about the degree of transparency in the European Parliament and the lack of transparency in the Council. Before that are all these prior position-making groups: the Coreper and other working groups, of which I know there is a multitude. There is nothing at all published about what they achieve. Is that the case? I am trying to put this into the context of the much-vaunted new power of national Parliaments to prevent legislation in the future. It seems rather late in the day to see things as they are presented, rather than to see how they might have developed so national Parliaments can perhaps get themselves ready to implement their red cards, this great new procedure that we are going to be gifted with. You can see my scepticism of it.

What happens at these working groups? Why are they not reported? Would it be a benefit for them to be reported? Going back to your point, Dr Hagemann, the UK Parliament could go up this route of explanatory notes as to why it took the position it did, but we have not decided to do so thus far. I assume we are not one of those that publish their explanatory notes.

Dr Hagemann: It is not the Parliament. The Ministers can, when a vote has taken place, submit a statement explaining their positions. The UK Government are more ready to assert themselves in voting—i.e., they vote no or abstain more frequently than most other Governments, especially currently. They also, at times, submit statements to explain those positions, but not necessarily as much as other Governments. Conversely, to take the other extreme of the spectrum, France has voted no once since 2009, which does not mean that France is always getting its way, but, rather, it very frequently makes use of public statements. It submits its concern there, but does not necessarily express it in voting. I have done research that shows that, across all the EU countries, the Governments that have Parliaments with strong Committees scrutinising their behaviour in the Council and what they sign up to tend to vote no or submit formal statements much more than Governments that have less strong Parliaments.

There seems to be a great impact of parliamentary scrutiny, and that is, of course, an extremely important point to take into account with regard to the red card procedure. That procedure is at the end of the whole process and not necessarily providing input into the beginning of the process. I am from Denmark, where we have a very different system. The Ministers have to appear before the European Affairs Committee, inform them, take things on board and get a mandate before negotiating in Brussels. That also has its challenges, but it means that, when legislation comes back to the Parliament, the Committee and the Parliament as a whole feel that they have been heard and included in the consideration of the Government's position in Brussels. There are some merits in that.

To go back to your first point regarding the working groups, they are, of course, made up of national representatives, either officials or experts from agencies. The UK is well represented in those working groups, equally with all the other countries. The negotiations there are of a political nature, but they are frequently also about technical issues, such as compatibility with national law, which might differ a lot across the EU countries. In my personal opinion, there is not necessarily a lot of merit for the public—maybe for researchers and other interested parties, but not the public at large—in terms of getting insight into that.

What is an important democratic issue is that, when the Commission has drafted a proposal—which is, by the way, based on the meetings with those working groups—if amendments are proposed by a Government, we have no information about that. We have no information, in

general, as to how the beginning of the text changes to the final text that we see. It is at Council level and often at Ministerial level that we see those amendments being introduced.

One other consequence of this formalisation and, as I mentioned before, the fact that more issues have to be recorded and taken by vote in the Council is that the ambassadors or the permanent representatives have said that they see more final decisions being pushed to Ministerial level. Whereas before there was an impression, at least, that most decisions were simply nodded through by the Ministers but the real negotiations happened between the ambassadors, that is not necessarily the case any longer.

Professor Hix: The average length of time it takes to adopt legislation after it is formally proposed by the Commission is 21 months. It is still quite a long time. Even when most of it is first reading, that is an extended first reading. In that process, I would like to see a situation where this Committee or one of the other Committees of the House of Commons can call a Minister, a representative from Coreper or somebody from the Civil Service who is responsible to come and ask, “What are the amendments that the British Government are supporting? Who else do we know who supports these?”

Rather than it necessarily being a mandate-type system like Denmark, which might not be appropriate for the British system of government because we do not have minority Governments—that is more common in Denmark—at least there should be the opportunity for this Committee or another Committee, if it is by policy area, to ask the Government, “What is the British Government’s position on this draft Directive and what amendments are you proposing?” I do not understand why that is not possible; I have never understood that.

Q10 Craig Mackinlay: Do you think this new red card system can possibly work within the framework under which we currently live?

Professor Hix: It could, but it is unlikely to, because it is very unlikely that there would be a situation where you would get as many Parliaments issuing a red card. It is likely that, if that was the situation, the Governments would already have stopped it, because that is way more than the blocking minority that exists in the Council. In most of our systems, it is a majority Government: the Government have a majority of seats, so the majority inside the Parliament is the Government. If the majority inside Parliament in that many Parliaments would stop it, I would expect the Governments already to have stopped it.

Chair: We must move on, because the new session is in seven minutes’ time.

Q11 Heather Wheeler: I am very interested in this compromise between greater transparency and the fact that it might slow down legislation coming through. You have just alluded to the idea that, within those 21 months, questions could still be asked back at the Parliament, but, Dr Hagemann, you are giving us the impression that it is really much more transparent than it ever used to be, so there is not much more transparency you could possibly have.

Dr Hagemann: I hope I did not suggest that. There have been big steps taken towards greater transparency, but, as I hope I mentioned, it is certainly not consistent across the Councils, and it is not consistent even from one Act to another. From one meeting to another, you might have a lot of information coming up from one meeting, but in the next meeting there is much less. The Council—and I know that the Council Secretariat is very supportive

of this—would like to see the implementation of stricter following of the internal rules of procedure as they are already written, such that the voting records are followed and the procedures are followed in greater detail.

In terms of transparency measures, there are many different kinds of transparency: one could have a camera in the room; complete transcripts, as is done here; voting sheets, etc. We know from US research that it varies: if you put a camera in a room, politicians especially might have a different idea of what needs to be said than necessarily sticking to the proposal on the table. Comparing that to simply having a record of the vote sheets and the positions of the Governments, there is a big difference. The impact will also be felt differently.

Q12 Heather Wheeler: You do not have concerns that greater transparency would slow down the process.

Dr Hagemann: Not as we have seen it now. Transparency can have the advantage that, from one meeting to another, for example, it is very clear who was on each side or who had which proposals for amendments, if we had those on record. If it is an informal discussion and you then have to continue discussions in the next meeting, we all know that it might require some re-evaluation or reminders of what was said in the previous meeting. We found in a recent publication that the records are helpful, especially because there is a turnover of representatives: it is not always the same Minister who goes to the meetings, or it is an ambassador who comes to one meeting and the Minister to the next meeting. Therefore, having everything on record can also have an internal disciplining effect.

Q13 Chair: I came on to the question of the nature of the legislative act, which is what Professor Hix has been concentrating on to a great extent, as compared to legislation that goes through a given Parliament, the United Kingdom Parliament being the one we are most familiar with. Sometimes even as much as a paragraph in a Regulation or Directive could be the equivalent, in relation to small businesses or whatever it is, of a whole Act of Parliament, which, in its own turn, then has to go through the entire process.

To the extent that we are talking about general transparency, you are saying there have been some improvements. But, for those who need to know what has been going on in terms of the passing of legislation, which then becomes something that affects the daily lives of the people of the United Kingdom, all legislation in the UK goes through two Houses of Parliament; it goes through second reading, Committee stage and amendments are put forward. We know what is going on and we can identify who has done what when. Then it goes to the report stage and you have another session. Yet one small paragraph in a Regulation could be the equivalent of an Act of Parliament. I see you nodding. Do you understand why I am asking the question?

Dr Hagemann: There have been a lot of meetings leading up to that, and the UK is represented in those meetings, so the representatives should obviously be there to enforce the priorities and opinions of the UK. It is true that we have gone from a system where there were several readings—usually at least two—in the Council, to now predominantly having agreements made at the first reading. There is a lot of criticism of that, in particular because it leaves us with fewer entry points for this input from national level. But the UK's permanent representation in Brussels is known for being extremely effective in terms of the influence it has on the preparation of legislation.

Q14 Chair: We do not know what is going on and we are parliamentarians. It is our constituents who have to obey the laws. Telling that me the permanent representative in Brussels, or his deputy on A-list, B-list or whatever it is, has been doing a good job or has been trying his best does not satisfy many people.

Dr Hagemann: I agree.

Professor Hix: This is why most interest groups in Brussels that are trying to find out what is going on—because, as you quite rightly said, what is being passed is affecting the rules under which they operate within the single market—go through the Parliament, because they can see what happens inside the Parliament. Even though 90% of legislation is adopted at first reading, in the Parliament they have lots of mini-readings within first reading, so you get multiple meetings of the Committee, and the Committee gives a mandate to the rapporteur. There is already a debate inside the Committee and they already know what things the Parliament is going to be pushing for. They call them back and they have multiple readings. That is where the interest groups, businesses, the media and the public can see what goes on in the process. I do not see why we cannot have the same in the other half of the legislature, which is the Council.

Q15 Kelvin Hopkins: To both of you: the interinstitutional agreement on better law-making includes very high-level commitments on improving transparency, the specifics of which now need to be identified and implemented. What specific changes would you recommend in order to deliver the IIA's transparency commitments?

Professor Hix: Sara probably has clearer views than I on this.

Dr Hagemann: I hope I can contribute something. There needs to be a set of principled decisions on this, so not an ad-hoc big package that can apply to all Council configurations. I believe that different levels of transparency are necessary for different kinds of Act. I understand that, in certain settings, the Council will need to deliberate behind closed doors; in Justice and Home Affairs, anything to with security is an obvious example. But one could very easily draw some conclusions. For example, when we have the ordinary legislative procedure in place, where the Council acts together with the European Parliament and there is full disclosure in the Parliament, we should also have that in the Council. That could be a starting point. Then, of course, there might be instances where the Government would want to re-evaluate the involvement of the European Parliament. Certainly, the accountability, as it is at the moment, is not consistent across the Council configurations, and that would be a very important first step.

As has been mentioned already, when we see the Commission's proposal at the beginning of the legislative process, the Governments' amendment proposals should be published. I believe there is a common system in Brussels for permanent representations—I think it is called the EXDOC archive or something of that sort—to submit their positions on amendments to each proposal. I could see very good reasons for making that public. My last recommendation would be to consider what kind of transparency we are talking about. Of course, the camera in the room is the way we will see everything, and that might be desirable, but other kinds of transparency, such as access to the voting records and minutes, could be a more appropriate step for certain Council configurations. Again, this has to be an initiative coming from the political level, because the EU institutions very openly express that officials

are not the ones to enforce or propose such drastic measures; this has to be an initiative from the Governments.

Professor Hix: Part of the problem so far is that, in a lot of the Council configurations, there has been overlapping business, where some of the business has been legislative and some has not been. You can imagine a Justice and Home Affairs Council where there is a debate about the Passenger Name Records Directive and then a discussion about what we do in response to the Paris attacks. The former of those is a legislative issue; the latter of those is a discussion about what action, collectively, the Governments are going to take. That needs to be secret and in the realm of the Executive.

I would hope that, as part of the inter-institutional agreement, there is some creative thinking about how we will separate that out so we can say, “This Council in this time period and this meeting is only doing legislative business and it applies these principles. Then it has to have a separate meeting, perhaps on a separate day or after lunch, where it is acting in an executive capacity and a different set of rules applies.”

Q16 Kelvin Hopkins: Simply publishing all proposed amendments before the meeting, so we all know what the Government are doing and whether they win or lose, because we see what comes out of it, would be a legislative process. Is it not convenient for quite a few Governments, and particularly the British Government, that it is always done in secrecy, because we do not know? There was a case recently where it turned out that it was the British Government resisting tariffs against China on steel imports, for example.

Professor Hix: It is a story of the history of all Parliaments, all across the world. Most parliamentarians would rather have all their decisions in private so that they can make deals. The whole history of the debate about the openness of the US Congress, the House of Commons or any democratic Parliament has been exactly this. If you are a legislator, more transparency means more constraints on what you can do.

Q17 Chair: We resolved this, in principle at any rate, in the 18th Century, and we are now talking about a process in the 21st. By any reasonable standards, you are saying that this is not good enough, not democratic enough and not accountable enough; there may have been some improvements but it is inconsistent. On the other hand, this is a lot of decision-making—if I can put it in the vernacular—by consensus in un-smoke-filled rooms.

Professor Hix: Yes.

Q18 Peter Grant: I wanted to look a bit more closely at how much the lack of transparency is because the European Parliament operates in the way that it can, and how much of it is because the UK Parliament does not actually use the opportunities available to it as well as it could do. Within this Committee, for example, by my reckoning, there have been 37 European documents since January where our response has been that the Government’s interaction with this Committee has not been good enough. We have used words like “cursory”, “unsatisfactory” and “unacceptable”, on at least one occasion. We have reported waiting for three or four months, or more, for a response from a Minister. We currently have 11 European documents that we thought were important enough that the House should have a chance to debate them, either in Committee or on the Floor of the House. Only one of those

11 even has a date to be debated. At least one of them has been hanging around since before this Parliament was elected last year.

Does that not point to a conclusion that perhaps the UK Parliament and UK Government need to get their act together as to how they scrutinise the actions of Government, rather than simply pointing the finger of blame across the channel and saying, “It is all them Europeans that are at fault”? Is there not a lot that could be done within the UK Parliament, possibly based on your knowledge of what happens in other parts of Europe? Is there not a lot more that the UK Parliament could do to hold its Ministers to account? Is there more that the UK Government Ministers should be doing to co-operate with that scrutiny process?

Professor Hix: I will reiterate evidence I have given in the past at previous hearings you have had in this Committee on this topic. There are two main things I have tried to highlight, when learning from other Parliaments in Europe that seem to do a better job. The first is what they call mainstreaming. There is such a large volume of law being passed that it is not possible, usually, for one Committee to stay on top of all of that. Perhaps the European Scrutiny Committee could be the lead Committee, highlighting the 10, 15 or 20 issues a year that it feels there needs to be closer parliamentary scrutiny of, but then delegating the scrutiny of that for the relevant Committee to look into it, where there is the policy expertise.

This is part one. The second part is what you do with that scrutiny. There needs to be a change of culture of the executive branch in London. If the House of Commons says, “We think this is an important piece of EU law”, the culture should be that some Minister or a senior official involved in the process is willing to go to a relevant Committee and explain the Government’s view on the issue, the position of the British Government and the types of amendment the Government should be putting forward. That has become standard in a lot of other Parliaments in Europe, and it should be the standard here.

Chair: We have come to the end of your session. One thing that can be said with certainty is that, with the cameras on, with the questions being asked, this is transparent and people do know what you and Dr Sara Hagemann think. Thank you very much indeed. No doubt we will be seeing or hearing from you again in the fairly near future. Thank you very much.

Examination of Witnesses

Witnesses: Rt Hon Sir Edward Davey, formerly Minister for Employment Relations, Consumer and Postal Affairs, Department for Business, Innovation and Skills (2010-12); Secretary of State for Energy and Climate Change (2012-15) and Rt Hon Owen Paterson MP, formerly Secretary of State for Northern Ireland (2010-12); Secretary of State for Environment, Food and Rural Affairs (2012-14), gave evidence.

Q19 Chair: Thank you both very much for coming. We have just had Professor Hix and Dr Sara Hagemann, who are experts in the field of procedure in relation to the matters we are going to be discussing with you. I shall ask the first question. I will address my question

to both of you, and then I will give you each an opportunity to respond separately. The vast majority of legislative files are adopted by consensus—we know that—masking policy differences between member states. In your experience of negotiating dossiers that were ultimately agreed by consensus, how was agreement reached? Could I ask you first of all, Sir Edward Davey?

Sir Edward Davey: I have to say that, most of the time I got involved in legislation, it was to look at what the European Parliament was doing in scrutinising the legislation. You are right to say that, at the European Councils I attended—and I attended five different ones over my time at BIS and at DECC—there were not huge debates about particular pieces of legislation that were before us. We tended to focus on big policy issues, whether it was reform of the single market, how we could work together on climate change at the Environment Council or energy security at the TTE Council. It is true to say that the Councils that I attended, including the informal Councils, were mostly on high-level policy and were not spending huge amounts of time, as you would do in a Standing Committee in the House of Commons, focusing on the minutiae of legislation.

Q20 Chair: We have just been taking evidence from Professor Hix, who was very insistent that, in the Council, it is a legislative act. He has been saying to us, quite clearly, that he is deeply worried about the fact that decisions that are legislative acts—just as an Act of Parliament is when it goes through second reading, the Committee stage, the amendments and, after that, the report stage and so on—are the means whereby legislation is imposed, under the European Communities Act, on the daily lives of the people in this country who are obliged to obey those requirements. You are now telling us that, in your experience, this was about high policy making; this was a grand Panjandrum effort of deciding about matters of policy. Actually, you have said that what was really happening on the legislative side of this, with decisions being arrived at by consensus and by Coreper, or whoever was looking at it before in the working groups, was taking second place to the big policy decision-making process.

Sir Edward Davey: Let me both confirm what I said and elaborate a little, if I may. First of all, I said that a lot of the time when one, as a Minister, got involved in the legislation was when it was going through the European Parliament, where there was a very considered process, as Professor Hix talked about.

Q21 Chair: But yours is a legislative act as well.

Sir Edward Davey: Indeed. But I am saying, in my experience as a Minister, you became more involved when the European Parliament was debating, both in their Committees and in the House. It is quite a procedure, as you will be very aware, as an expert, by which the European Parliament takes on legislation. In terms of the Council, which is obviously part of the legislation-making body, one would sign off memorandums; one would, as a Minister, have to agree to whether that was the right thing to do; one would give advice to Coreper. Indeed, Sir William, I remember writing many letters to you. In fact, I think I wrote more “Dear Bill” letters than appeared in *Private Eye* during Baroness Thatcher’s time in No. 10. We corresponded quite a lot about EU legislation and various other matters that were before the Council.

Mr Paterson: Thank you very much, Chairman, for inviting me to the Committee. I attended a large number of Agriculture and Fisheries Councils, because I inherited the process of

negotiating the next round of CAP reform. It was very interesting to see how law is created. The first point I would make is that a vast amount of points were decided off-piste: the “A” points. They were noted by the Chairman of the Council as having been decided. They were covered by the permanent representatives, who are in meetings on a very regular basis.

I never quite understood what really came to the Council. The subjects we actually discussed seemed to be quite arbitrary. Of course, it took ages. Because there were 27 countries—Croatia had observer status and then took on full status—it always took quite a long time to go through all of the points. The nitty-gritty of CAP was going nowhere until the Irish took the Presidency and Simon Coveney, the Irish Minister, got a real grip on it. He drove through one-to-one meetings either with individual Ministers or with Commissioner Ciolos, who was the Agriculture Commissioner at the time.

In many ways, the whole process is an exact reversal of what happens in the House of Commons, in that the proposals come from the Executive, and in the House of Commons, in theory, we all come with nice, bright ideas. We have a second reading; we go through a Committee stage; we can amend legislation; we can have new ideas thrown in through the legislative process. Of course, if it all goes horribly wrong, we can either repeal or amend legislation. None of that applies to the way European legislation is passed. Once it is through, there is such a huge, exhaustive sense of relief; it is untouchable.

If you take one example, an issue that came up frequently in Cabinet was the problem of the Habitats Directive, and construction sites and building projects being held up. I went to see Commissioner Potočnik about the Habitats Directive. Bizarrely, we have a disproportionate number of newts in this country as part of the European population. Everybody is grinning. Newts are a very serious issue. I made it clear that we had means of handling newts in this country, which were very satisfactory for newts but had also helped construction projects.

Commissioner Potočnik was very clear. He said the Habitats Directive was drawn up by, then, 27 nations after exhaustive discussion. He made it completely clear that there was no way he was going to touch it. He actually said, “Opening the Habitats Directive is opening Pandora’s Box, and I never open Pandora’s Box.”

We were completely unable to shift this piece of legislation, where we actually had very sensible and environmentally friendly solutions in this country. If it was in our own Parliament, we could have gone to the Government and have the amendment passed through, and it all would have been sorted. As it is, once it is through in the European system, it is absolutely set in stone. It is such a gruesome process to get anything through that it is not touched, and that does not make for good legislation.

Q22 Damian Green: How often did you vote in Councils? By definition, as a Minister of State I was only sent to boring Councils, so I would not have expected to be at the exciting ones, but I literally never participated in a formal vote. How often did they happen?

Sir Edward Davey: Very rarely.

Mr Paterson: A few times, but you are right: not all the time.

Damian Green: I ask, because anyone coming to this fresh and listening to Professor Hix would think that the Council spent half its time doing formal legislation and half its time doing other stuff. That was not my memory of Councils at all.

Q23 Chair: Could I ask a question, related to that, which is very important? Despite the fact that there are virtually no votes, the reality is that it is done by consensus. That does not alter the fact that it becomes legislation. Once it has gone through the process of what is called the Council of Ministers, it then becomes legislation and therefore, through Section 2, it is binding upon the citizens of the United Kingdom.

Sir Edward Davey: Sir William, can I make a parallel to the UK process that is more apposite than the one you are trying to draw? When you are putting legislation to Parliament as a Minister, you go through a process of consultation. The Commission often does that. You then talk to colleagues within the Department and across Government. There is a process with Government where Ministers could have an exchange of letters to decide what the legislation should be, with a sponsoring Minister driving it through Government, as one part of the legislative process. We then hand that to Parliament. We have a bicameral procedure.

Of course, in the European Parliament, the Council of Ministers, having looked at the initial proposal from the Commission, hands it to a unicameral Parliament. That unicameral Parliament does quite a job of analysing the legislation. That is the analogy I would draw. I do not see that there is a bicameral nature, where the Council is one chamber and the Parliament is another chamber.

Q24 Chair: Could I put this in context? You were not at the first session, where I made this point. It is a matter of fact. We know, for example, that between 70% and 90% of decisions are taken by officials rather than by Ministers. That is now intensified, in that 85% to 87% of decisions are taken informally at first reading through deals with the European Parliament, which goes back to what you were saying.

Sir Edward Davey: Actually, a lot of the legislation this House passes goes through without a lot of debate because it is uncontroversial.

Chair: I would not say that.

Sir Edward Davey: I would say that. I have sat in many Standing Committees, Sir William, and, with due respect, there are an awful lot of clauses the Opposition do not think worthy of debate because they are uncontroversial. That is not unusual in law-making.

On Owen's contribution, which in many ways I agree with, I would say that he is too modest. I thought the way he handled the horsemeat scandal was fantastic. Not only did Owen get action, but he reformed a flawed EU process quite quickly. Very few Ministers have used EU process to such effect, got a good deal for Britain and reformed the EU while we were in it. I have always thought he was a very good pro-European Minister.

Mr Paterson: Can I pick up on your last point? The other incredibly unsatisfactory aspect of European legislation is that the Secretary of State from the United Kingdom goes as one of 28 and gets outvoted. On the CAP negotiations, we are frequently outvoted and we have to accept very, very unsatisfactory compromises. This has got worse as the CAP is morphing from a system of sustaining production and employment in rural areas to trying to become a pan-European environmental policy. That is really difficult. Some of it is just not transferable across the whole physical landmass.

It means that it is very difficult to transpose a lot of this legislation to a country like ours, because of the very diverse nature of our landscape, etc. On day one at Defra, I was astounded to find out we were being fined—"fined" is the crude Anglo-Saxon term; it is

“disallowance” in euro-speak—a disallowance bill of over £600 million for the manner in which the last Labour Government introduced CAP reform. That is a proper sum of money. I have not actually talked to Margaret Beckett about this, but I am sure she also suffered compromises. The way she implemented the reform was not to the satisfaction of the Commission, and there is no comeback on that. You get whacked with this monster sum of money.

You are forced by the system to accept legislation you do not really like. You do your best to build alliances and get the legislation amended, but, if you fail, the legislation is then imposed upon you. Almost daily, there were issues in Defra where I was looking at how we could stretch the rubber band of the regulation and the law to see how we could adapt it satisfactorily—to English circumstances if it was in agriculture, and to UK circumstances on some other issues—without risking infraction from the Commission

Q25 Mr Turner: Many legislative files are adopted by the Council as “A” items, meaning no discussion, having been agreed by officials through working groups and Coreper. How much involvement did you have as Ministers in signing off positions to be taken by your officials at pre-Council stage? During that time, what types of items on the Council agenda were “B” points and therefore debated?

Sir Edward Davey: In terms of things like “A” items, you might have been involved with them at the early stages and, if they were uncontroversial, you would let them go through. If that was not the case, you asked questions and you were briefed, and, if you were concerned about it, you could raise issues.

At Councils, I felt able to raise legislative issues and, indeed, put them on the agenda. As a good deregulator, when I was in the Department for Business, I was concerned that some of the Regulations were not just from the UK but were from the EU, and we needed to deregulate them. There was one particular one I had been told of, which was hitting all businesses, small, medium and large, from an Accounting Directive that had been passed in the 70s and no one bothered to look at.

I was told by my officials that, if we made one relatively minor change, we could save micro-companies £400 million. I said, “I would like some of that, please.” My officials said, “It is too difficult, Minister. The French will not allow it.” I said, “Let me talk to the French Minister.” I talked to the French Minister and the German Minister and, actually, with a little tweak, we could get agreement on it. We put it to the Commission; we got it on the Council agenda; and I got a deregulation. Bizarrely enough, it was that easy, but it was only easy because British Ministers got off their backsides and did what they should be doing.

My experience of “A” items and “B” items, whatever type of item it is, is that the way to do European politics is to build relationships. For too often in this country, we do transactional diplomacy, where we do deals. Relationship diplomacy is about making agreements, where you get to understand the other side’s point of view and you have a chance to persuade them of yours.

When I was at BIS, I created something called the like-minded group for growth. Originally, it was 13 member states. We had our inauguration meeting in London, which I chaired, having set the group up. We moved forward on a number of growth items—for example, the

EU-Korea FTA, deregulations, energy and the digital single market—because we were caucusing and we were making coalitions, which Britain was leading.

When I became Secretary of State for Energy and Climate Change, I set up a like-minded group for green growth; we call it the Green Growth Group. That led to all the work we did in climate diplomacy over two and a half years. You may not like this, Owen, but we reached a climate deal called the 2030 Energy and Climate Change Package. That was a group set up by a British Minister, pushing British policy, and the end deal was basically written here in London. My point to you is this. When you are at the Council, whether it is a legislative item of type “A” or type “B” or whatever else, if you make the effort, you can win the argument, but you will only win the argument in the longer term if you built those relationships.

Mr Paterson: I would agree with that—up to a point, Lord Copper. I will give you two examples. On the first one, I entirely agree with Ed. That was the issue of getting a new regime, allowing countries that wanted it to have an opt-out for the planting of genetically modified plants. I did exactly what Ed is praising and suggesting that Ministers do. I formed an alliance with pro-GM countries and anti-GM countries. I remember going around the Council with the Austrian Minister, who was fiercely opposed to GM. We were lobbying every one of the other Ministers to vote for our proposal, because it gave an opt-out to those who did not want to go along with it. You asked about voting. That was one of the very rare occasions when I can remember a clear vote. Actually, only three countries abstained, because we did go around every single Minister and lobbied for what was then called the “cultivation proposal”.

Against that, I would cite another very high-profile issue, which was the issue of neonicotinoids. That generated a massive campaign, certainly against me and also against the Commissioner. I had 85,000 emails to my Parliamentary account, which was bad news if you wanted a hip replacement in Oswestry.

Sir Edward Davey: One of them was from my mother-in-law; I beg your pardon.

Mr Paterson: We had them all over. We stuck very firmly to our scientific evidence from our Chief Scientific Adviser that these products were good for the environment and did not damage the bee population. I did what Ed wanted; I formed a coalition. A country like Hungary had extensive use of neonics. They had about 2 million hectares under neonics for three crops—maize, sunflowers and rape—and a big honey industry, producing 20,000 tonnes of honey, compared to 5,000 tonnes produced by us. We built up our bloc.

I remember very clearly answering a question, Mr Turner. As it happened, I was in the NFU headquarters in Stoneleigh, by complete chance, on the day of the vote. The deputy representative was in the Coreper meeting, and you could just sense the massive pressure on her not to vote as I wanted. I was certainly rung four times, and possibly six times: “Do you really, really want to vote no?” I said, “Absolutely, emphatically.” I felt very strongly that the alternative to these materials would be, and has been proved to be, really bad for the environment. Without a clear, modern alternative, the fall-back would be to horrible things like pyrethroids, carbamates and organophosphates, which are really bad news.

To answer your question, there is tremendous consensus among the establishment in Brussels. Do not forget that our representatives are there the whole time. They are working together and they spend far more time there than we as politicians do. You just sensed that

she was under real pressure not to go along with what we wanted. She kept querying; she kept ringing and saying, “Are you absolutely sure? We have the vote coming up, Secretary of State. Are you absolutely, absolutely, absolutely sure?” I said, “Yes, I am”, because we had worked on it with the Hungarians and the others.

On your first point, because there is such a vast amount of detail to do with the CAP reforms, an awful lot of stuff went through as “A” points. Looking back, that was broadly decided by our representatives following our guidelines, but I never saw minutes of the Coreper debates; I never saw how they were finally arrived at.

Q26 Mr Turner: The minutes point is particularly relevant. Without minutes, how can one tell what happened at the meeting?

Sir Edward Davey: There are minutes, and you can read them if you want to, but I have to say that most of them are tedious in the extreme. You could read Hansard every day, if you wanted to.

Mr Paterson: I do not remember seeing minutes of Coreper meetings.

Sir Edward Davey: They are available. I have definitely seen some of the meeting minutes. To be honest, minutes often do not tell you what happened. Read the Cabinet minutes, for example.

Q27 Peter Grant: I do know of a number of our doorkeepers, for example, who read Hansard avidly, because their view is that they are proud to work here, and it would be a shame if they worked here so hard and so long and never had any idea of what was going on, on the other side of the door. Some people do find it interesting.

I want to go back to the Coreper and working group processes. Would the transparency of the whole system be improved if their deliberations were made public so that everything that had happened up to and including the Council deliberation was made public? Is there any genuine organisational reason why that could not happen?

Sir Edward Davey: My general principle is that I am in favour of transparency. Obviously, as we heard from the previous witnesses, there are occasions—security and so on—where that is inappropriate. There would not be that much objection to more transparency. The issue is: what do we want to be transparent about? When do we want to be transparent about it?

An example might be the TTIP negotiations, where the trade negotiator is negotiating. We can be transparent about his mandate and the outcome, and the European Parliament and the Council of Ministers can debate the treaty. But you would not necessarily want every bit of negotiation, deliberation and working group on the TTIP files, which are extensive, to be on camera. It is a question of what and when.

I would also say that there is quite a lot of transparency at the moment that is simply not used. The amount of EU documents I signed off for Parliament was enormous, and I did not have one single question or letter from any MP whatsoever. Let us remember that, in many ways, we could maybe improve in transparency. We should put own house in order, Sir William. This may be off your agenda—I do not know—but the House of Commons needs to reform itself as to how it looks after our money. The last time MPs voted against a spending request of the Executive was in 1919. We have given up parliamentary sovereignty over the budget.

If there is one point of constitutional reform that actually puts the whole European debate into context, it is that we should take charge and scrutinise the Executive—I am sure you would agree with this, Owen—about how it spends money far more than we do.

Q28 Chair: Are you suggesting that the Public Accounts Committee does not do its job properly?

Sir Edward Davey: No, it does it after the event. There is ex-ante and ex-post scrutiny of budgets. This House of Commons is quite good at the ex-post audit, with the National Audit Office and the Public Accounts Committee. That is one of the best functions this Parliament undertakes, in my view. But, we have given up, for nearly a century now, any scrutiny of the ex-ante spending. That is a fact.

Chair: Although I listen to what you say, we are not here to talk about spending

Sir Edward Davey: I have written a pamphlet about it.

Q29 Chair: That is obviously the reason you want to get it in front of us today, but we are talking about legislative acts. It could be fairly said that, having taken a certain amount of evidence so far, there is a strong concern, certainly from Professor Hix and Sara Hagemann, who were in here before, about an inconsistency and a lack of transparency up to the level of what they would regard as being necessary for the proper democratic examination and transparency of legislation that comes to the Council of Ministers. That is the essence of what they were saying.

Sir Edward Davey: Sir William, one can absolutely agree that there must be room for improvement, but one should also see what the Council does in the context of what the Parliament does. If you do not, you are not getting a full picture.

In terms of the lives of the British people we are here to serve—or you are here to serve; I am no longer one of your Members—we must ensure that the money that comes out of their pockets and is spent is scrutinised, as well as the laws that go through the European Council, which tend to be related to single markets. The vast majority of laws, as you will know, Sir William, having looked at them so closely, are to do with trade and affect businesses. That is what the European Union does following the European Act, put through this House of Commons by the late, noble Baroness Thatcher in order to push the single market. EU legislation tends to be around trade and regulating trade; the vast bulk of it is about that. That absolutely does need scrutiny, and it should be as transparent as possible, but it is a little boring for many citizens, except those ones particularly focused on it.

What I would think would be a really good exercise, rather along the lines we did in the coalition Government with the red-tape initiative, is a proper analysis of the EU regulations that worry business, to see whether we can get consensus on either improving or deregulating them. In my experience as a business Minister on a deregulation agenda—the deregulation I talked about earlier was one of the biggest deregulations the coalition achieved, the carve-out for micros—other EU member states want that, particularly for small and micro-businesses. The Commission does not want to regulate and pass these burdens to businesses. It is about making sure, through transparency and other reforms, that we enable the process to lift those burdens, where they exist.

Q30 Chair: We had a competence review, which took place during the time of your coalition Government. I remember giving evidence to it in relation to the single market and its operations, as Chairman of a Select Committee, as did Bernard Jenkin, who is also Chairman of a Select Committee. As a result of that—I do not know whether you were ticking the boxes on that particular competence review—there was no reference whatsoever in the body of the competence review to the evidence we gave at all. We were relegated to a reference in the bibliography. That is a personal comment, though.

Mr Paterson: Could I just pick up this point? Transparency does not go anywhere near the system. Decisions are made behind closed doors quite deliberately. I would not know what happened at the Coreper meetings; that was all decided in closed meetings. If you think about it, the vast majority of Defra's competences have been handed over to the European institutions: ag, fish, the environment, pretty much everything.

I would not quite agree with Ed. The detail of the everyday running of farms, abattoirs and fisheries is decided at the European level now. We had to try, on the issues that came before us, to work with alliances to get some of that legislation amended so we could adapt it to our own circumstances, landscape and marine environment. As I have said, we did not always succeed. Therefore, we had to accept a very unsatisfactory compromise, and then we found we were clobbered by disallowance. That is a very unsatisfactory way of running things.

Transparency does not feature anywhere. The key meetings were not the roundtable discussion at the Council. The subject was often something that was fairly arbitrarily chosen; I never quite understood the importance of it. It took a long time for 28 people to have their say. The real meetings of the Council were the bilateral meetings. I would go off with the German Minister or the French Minister and sort things out in private, or we would have a meeting with one or two others to go and see the Commissioner. Obviously, none of that was minuted at all.

In terms of this Committee, I happily had the honour to serve on this Committee with you, Sir William, some years ago. I remember piles of documents coming before the Committee, but we could not do anything with them. I remember one day when the Liberal representative got stuck in a lift and a Labour representative was ill, and we managed to vote to get a procedure discussed on the floor of the House of Commons. It was something to do with the dairy industry. Margaret Beckett popped up in business questions, as the Leader of the House, and said, "This is not going to happen."

This big, brave Committee, scrutinising away, had ruled that the House of Commons should debate the issue. If it had gone to the Floor of the House of Commons, the House of Commons could not have amended a single word. It could not have repealed it; it could not have amended any of the monetary issues involved. The issue of Parliamentary scrutiny on this stuff is all pretty synthetic, I am afraid. It is designed not to be amended. It is designed to be driven from the centre.

Q31 Peter Grant: Some of the questions asked earlier on may well form part of the Committee's final conclusions as to whether it has been designed not to be transparent by Europe or whether there are influences at work closer to home to make sure it is not transparent.

Could I paraphrase Sir Edward's comments earlier on? Mr Paterson, you have essentially said the system is not fair, does not work and is not transparent etc. An alternative interpretation might be that most UK Governments and UK Ministers have thought the system was not very good because, historically, too many of our Ministers were not good at working in the system, whereas Ministers from other countries appear to have worked with the system better. Is it that the system does not work or just that, for some reason, UK representatives have not worked with the system and have not delivered as effectively as they might have?

If I may be so bold as to ask another question—do not feel you have to answer it—is there an issue that, if a group of people know they are not performing, the last thing they want is to be held open to public scrutiny?

Mr Paterson: If I could answer that directly, I made a real point of working with allies on all sorts of different issues. They would vary, depending on what the particular subject was. Ed said kind words about horsemeat. I remember ringing Simon Coveney when the Irish had the Presidency. I rang him in Dublin and I said, “We have to get hold of the Commissioner.” I rang Tonio Borg and we organised an emergency meeting the following week. I then went off to see Europol, where you have to have three constituent member states. We had a meeting with Le Foll, and he agreed to come along with us. In fairness, I really did try to make the system work.

Sir Edward Davey: You did.

Mr Paterson: The system works. It delivers legislation, but it is not legislation that is satisfactory for this country. If you take the issue of crop diversification, which was an absolutely and completely determined issue for Commissioner Ciolos, the idea was to stop the Germans growing huge mono-blocks of maize around AD plants in Germany. The NFU is very concerned about this, quite rightly, and it is causing chaos now. All along, we have said that it would be incredibly hard to apply this mandatory demand to diversify crops on the very varied landscape of all parts of the UK. It is particularly bad for Scotland.

We had allies. I remember very clearly taking a Spanish colleague to see Ciolos and he said, “We cannot diversify in Andalusia in June or August, because it is over 45 degrees and only one olive tree survives.” I deliberately took along my Swedish colleague and he said, “Come up to northern Sweden in December, and it is minus 45 degrees, and we only have one spruce tree that survives.”

It was unworkable, and this is the point I am making. Ciolos was trying to impose an all-embracing European environment policy, which is completely unworkable. Farmers are struggling with the consequences, as we speak, this afternoon. The system delivers; it delivers legislation. It is just highly unsatisfactory legislation for our own people, given the nature of our farming and our landscape. It cannot be amended and it cannot be repealed. If you introduce it in a manner that is deemed unsatisfactory by the Commission, they arbitrarily clobber you with a massive fine. That seems to me a very silly way to run the sweet shop.

Sir Edward Davey: I have to say my experience is very different. The UK's influence at EU Councils is dramatic. It is partly because we have first-rate civil servants. Our civil

servants prepare both on files and with their Ministers better than any other member state, and that is widely recognised. The brush-bys and bilaterals that Owen referred to are very effectively planned to get our point over. If you do the relationship diplomacy I was talking about before, you can really win almost everything, frankly.

There are some issues, as Owen touched upon. I am not an expert in farming in the way he is, although I disagreed with him on the pesticides point, but let us put that aside. In energy, different countries have very different needs in energy, bizarrely enough. Some are smaller; some are larger; some have different types of territory.

One of the challenges in the energy package I dealt with was about making sure that it was technology neutral. The Germans were desperate to replay a renewable-energy target. While I love renewable energy, I thought that was probably bad and more costly, because it would exclude options for carbon capture and storage, energy efficiency and nuclear, and we needed to have all options on the table. Indeed, if you wanted to apply a 2030 energy and climate change package across the whole of Europe, you needed to have flexibility. Guess what? Because we engaged and created the Green Growth Group, we got the Germans to agree with us and we got the legislation and the policy through that allows different countries to take different approaches, within an overarching decarbonisation agenda—a very ambitious one.

I am afraid I had a very different experience. We actually won; we engaged; and we got things that prevented a one-size-fits-all approach, which—I agree with Owen—can be very, very damaging. It can be very damaging within the UK when this place legislates in a one-size-fits-all manner, because, as I am sure you will agree, Peter, Scotland, through the Scottish Parliament, as a devolved Administration—though we may disagree on that bit—can ensure that policy works better for Scotland.

It is about ensuring that the institutions, whether they are UK institutions or European institutions, adopt sensible laws and policies. Either you have Ministers who go there and achieve that or you do not.

Chair: The only question remaining is the one of transparency in relation to the question or whether or not the legislation is made in the way that many people might have expected it to be done. But there are constraints.

Q32 Damian Green: Thank you, Chairman. I should gently observe that it is slightly ironic for you to say that British farmers think the system is not working for them, in the week the NFU has decided they wanted to stick inside the European Union and stick with this system. It is pretty clear that British farmers do not think the system is failing them.

To revert to the subject of transparency, in the end, a lot of this discussion is about whether Council meetings themselves should be more transparent. Should they be treated like a Committee meeting like this or proceedings on the Floor of the House of Commons for at least part of their time? Will that make any difference? Would it make them less efficient? Would it lead to more grandstanding and less serious discussion? How much difference would it make?

Mr Paterson: You might be depressed to hear, Mr Green, that, at a meeting of farmers in Whitchurch, the town where I was born, on Friday, 27 farmers were undecided, 26

want to leave and nine want to remain. Farming is divided, and I would point out that the CLA has decided to remain firmly on the fence and not take a position.

Damian Green: We can swap AGMs. The Ashford NFU AGM voted overwhelmingly to stay in.

Mr Paterson: I know. The NFU is different. This was an open farmers' meeting. They are completely divided, actually. The problem with farming is that there is just such a vast amount of detail. The "A" points are decided by the civil servants. I entirely endorse Ed's comments about the civil service: our civil service are very much respected. They always gave me really good briefings; they gave really good background. The routine was that I would turn up in the morning and we would have a meeting with the devolveds, because of course Scotland, Wales and Northern Ireland have a separate policy arrangement and they make their own policy.

We would come up with a speaking note that was satisfactory to the devolveds with a whole lot of points. The SNP Minister was always very assiduous in giving us a shopping list of things he wanted, which we pretty well nearly always delivered, to his disappointment. Then we would go into the speaking round, but you were only talking about one subject. The vast amount of subjects would be decided off the record. That was either through "A" points or through comitology, which you have not mentioned, where the experts get together. That does not go near politicians at all.

Q33 Damian Green: So it would not make much difference, basically.

Mr Paterson: It would be interesting to publish the minutes of all those separate meetings. It would be interesting to know that.

Sir Edward Davey: Quite a lot of heavy weather is being made of this, because there is a whole set of civil servant groups and other stakeholder groups that we have in our system, which are very important in the process and are not on camera and recorded, and nor are cabinet meetings.

When you are sitting in Council, it is quasi cabinet-like as much as it is like Parliament. You are doing two things. You are coming together as an elected person to a Council full of elected people to look at initiatives that the Commission—almost like the civil service—have drafted. You, as elected Ministers, take a view. To me, that is as analogous to a cabinet meeting or a meeting of Ministers in a Department as it is to Parliament. Then you have the European Parliament analysing it. That does not seem too dissimilar from the UK experience.

Would it make a bit of difference? I have no objection to more transparency on the Council. Why would I? However, I question how much the transparency we have at the moment is lacking. My experience is that the transparency provided was not used by Members of the House of Commons, or the Lords, for that matter. I also question, if we have extra transparency, whether or not that would do any good. I am sorry to repeat myself, but there are issues of parliamentary sovereignty rather closer to home that we should be worrying about. I am fed up of hundreds of billions of pounds being spent without being scrutinised.

Q34 Chair: Could I give you an example of something that has been through the Committee and, indeed, into the parliamentary process? This is a matter of great importance, namely the Ports Regulation. In a nutshell, that Ports Regulation is objected to by every one of the 47 port employers in the whole of the United Kingdom, by all of the trade unions concerned, by the Government and by the Opposition. That is a pretty good royal flush, yet it is still going on. The truth is that the reason it is still going on is because it comes out of the European Commission proposals; it gets locked in; and the bottom line is that there is no way anyone can actually stop it. At the moment, it is at a state in the European Parliament and has yet to come back for a debate in the House of Commons.

Sir Edward Davey: Sir William, I am not familiar with that, but let me give you an analogous one I was very familiar with. I know the Leader of the House has been praying this in aid, I think incorrectly. There was a proposal from the Commission for a Regulation looking at the health and safety and environmental regulations of off-shore oil and gas drilling following Macondo. The Commission, considering it to be a cross-border environmental issue, which it clearly is, because it is at sea, was concerned that we needed to ensure that off-shore oil and gas drilling in the European Union was up to health and safety and environmental standards, given what had happened at Macondo.

When I looked at that, I thought, “That is appalling.” In the United Kingdom, we already have a gold standard, following Piper Alpha and one or two experiences we had. We did not need this EU Regulation. We could have a Directive, and our existing gold-standard regime could fit into that without any changes. We did not need a Regulation.

All of the industry and all of the parties agreed—just in the way you have talked about in the ports—but rather than going, “It is all Europe’s fault”, I got out there. I talked the Commissioner; I talked to the people in the Parliament; I talked to the Danes and the Dutch, who were of our view and obviously are North Sea players as well, and we got it changed.

Chair: You have your experience of that. At the moment, if I may say, we have observed the Ports Regulation. It is on the record. I will leave it at that for the time being.

Sir Edward Davey: Sir William, you should be asking, “What is the ports Minister doing?” One of the things I would like the EU Scrutiny Committee to do—if I may be so bold, and with due respect to you, sir—is to ask Ministers what they are doing to build up relationships. You win at the EU for Britain when you build up relationships. When an issue comes forward, you and your officials already know the people. You can ring up and say to Hans or Frederique or whoever it may be, “We have this problem. Can we deal with it?”

I proposed, at the European Committee and, indeed, at Cabinet, that the UK had a joint Cabinet meeting with the Germans once a year. I believe the French have one twice a year. Why did I think that? It is not because I wanted to give some sort of freebie to Berlin, I can tell you. I believe that building up relationships with German and French Ministers is absolutely fundamental to this country’s interest. Our failure to do that sells our country short. It is therefore dependent on whether a Minister is going to get off their backside and build those relationships themselves. That is too arbitrary.

This Committee would do this country a great service—assuming we vote to remain on 23 June—by asking Ministers not just for papers and memoranda, important though those are, but asking them what they are doing to make sure they know their Slovakian counterpart or

their Estonian counterpart. If you do that, with the benefit of our gold-standard civil service, we will really be able to boss the European Union.

Q35 Chair: I am sure that what you are saying about the question of relationships and alliances has some interesting facets, but I just make the point that the majority voting system, through consensus, is not transparent, so far as I can judge. We will wait to hear the other evidence we are expecting to receive.

Actually, there is a real problem in terms of the manner in which the legislation is made by one set of countries as compared to another. You can have your alliances, say, for example, if you want to build them up, with the French or the Germans and so on, but in practice there is a very serious problem within the system as to whether or not certain countries—let us say two large countries and two small ones—are able to enter into a blocking minority. That is another problem. It is not something that is decided as a result of a democratic decision-making process; it is done by a series of countries entering into the alliances you are referring to, producing results that are beneficial to those running the system more than others.

Sir Edward Davey: Sir William, if I may, I was involved, at different times, in forming blocking minorities. I was involved, at different times, in ensuring we had the qualified majority to get our way. By the way, each time we did that, we won. It reminded me of what we did in Cabinet. We have consensus in Cabinet, and we have collective responsibility. Sometimes not all Cabinet Ministers agree with things. Surprisingly enough, I did not agree with everything that my Conservative colleagues wanted to do, but you create a consensus. There were blocking minorities. Sometimes the Liberal Democrats blocked the Conservatives; sometimes a small group of Conservative Ministers blocked the other Conservative Ministers. That is how politics works. You build coalitions, whether it is in the Cabinet of the United Kingdom—

Chair: With great respect, Sir Edward Davey, you are talking about policy. You started with policy at the beginning.

Sir Edward Davey: It is law as well.

Chair: We are talking about the question of legislative acts.

Sir Edward Davey: You see coalitions built in this Parliament, between parties and across parties, on controversial legislation. That is what politics does.

Q36 Chair: Yes, but wait a minute. We are talking about the transparency of the legislative act.

Mr Paterson: I just want to come in on this point. Transparency is not the issue; it is the fact that this legislation, once it is through, is fixed. It is set in stone, it cannot be changed and it cannot be repealed. That is the real killer of the system.

I entirely agree with Ed's comments on alliances. I spent a huge amount of time building alliances. At my first meeting with Ilse Aigner, who happens to come from Bavaria, we

discussed Rococo churches in a language my civil servants could not keep up with, which helped.

On the last night of the CAP reforms, it was quite dramatic. I was in her offices at two o'clock in the morning, and we were actually haggling about an issue the Scottish Minister wanted to get, but at the last minute—the whole CAP reform would not have gone through without the UK and Germany working together—we had to accept something that neither of us really wanted. The whole thing is a process of trying to stop really bad things happening and damage reduction

Sir Edward Davey: Owen, did you get your way on every issue in Parliament and Government? I did not, and that is how politics works. People are building common positions and they are compromising

Chair: If I may say so, we are not really taking about that in this session of our Committee.

Sir Edward Davey: Sir, with respect, law-making is about compromise.

Chair: We are talking about the process as well as about the outcome. Could we move on to the next question?

Q37 Peter Grant: Thanks, Chairman. You have caught me by surprise. I did not think I was going to be up next, but I will ask my question anyway. If we fast forward six months or 12 months, we will have the result of the referendum. If the result is out, all of this becomes academic apart from for those of us who then try to find a way of staying in. If we vote to stay in and let us just say there is insufficient movement by the EU towards the kind of transparency you want, we then have to look again at what we do in this Parliament to make things more transparent. From your respective times as Back-Benchers and possibly from whatever you came up against as Ministers when Parliament was scrutinising you, what changes would you like to see Parliament undertaking so that at least the parliamentary scrutiny that happens here can be improved on where it is just now?

Sir Edward Davey: It is a very good question. I have already given one example where this Committee and the Lords Select Committee almost has it as part of their job to look at legislation but also ask Ministers what they are doing about building the alliances that are necessary and the policies and legislative files they are following. That is really important. It would also be good to see if there were ways in getting Westminster MPs and British MEPs—or, indeed, any MEPs, frankly—to talk more. You could, for example, have sessions of Select Committees where Committees from the European Parliament came here or we went there to engage more on those issues, be they legislative or otherwise, Sir William, so there is a better understanding between them and a better understanding of the processes.

I believe all democratic processes can be reformed. I believe House of Commons processes could be reformed. I believe the European Parliament and the European Council processes can be reformed, because they are all imperfect. My council is imperfect; the London Assembly is imperfect; Westminster is imperfect. They are human constructs. The question for me is: should we have them at all? It seems to me that, given there are issues qua local, qua national, qua international, you need them. The process of improving them is a continual

one. I have given you two examples; Owen may well give you more. However, it will be an unending process, and it should be returned it, because human beings are fallible.

Mr Paterson: The problem is that it is unreformable, in that it is impossible to introduce any democratic accountability into the system. There is no power within the system, and I keep banging on about this: you cannot amend and you cannot repeal.

Sir Edward Davey: You can.

Mr Paterson: You cannot.

Sir Edward Davey: You can; I did so. I have given you an example. I deregulated the Accountancy Directive. It was my initiative; I got it in the Chamber. It reduced costs for micro-company businesses who employed nine people or less, by £400 million, in one estimate.

Mr Paterson: For every attempt I made, in relation to the Habitats Directive and in other areas, there was no formal mechanism, where you find that it is unsatisfactory legislation, for you to appeal to anyone or bring it back and amend it. A really bad case was about a week or two weeks before I left the Department; this is very relevant at the moment. This was a coal mine in south Wales called Aberthaw. The local MP brought it to my attention that 2,000 jobs were at risk. It appeared that there had been a change of interpretation or a nuance of the pollution regulations, which was going to have a very severe effect on this coalmine—when they had spent a fortune bringing it up to standard—along with the nearby works where the coal was burned.

I was in the process of setting up a meeting with the Commissioner. What we thought had happened when I left was that there had possibly been a change in translation somewhere, but there was a completely arbitrary twist, with very grievous impact on 2,000 UK citizens. The problem is—I just do not agree with you on this—that there is no formal process to deal with this if you find this legislation is injurious to you citizens. In the areas of my competence, which is very much the environment, it is impossible to have common standards across such a vast, diverse geographical landscape.

There is no way you can bring an issue. You have all these papers before you, but you cannot do anything about them. You can note them; you can disapprove of them. As we did with Margaret Beckett, you can ask to have a debate on the Floor of the House of Commons. It will achieve absolutely nothing. Once it has gone through, it is set in stone; it is done. The Commissioners make it very clear that it is a very traumatic business getting the stuff through and they do not want to reopen Pandora's Box.

Sir Edward Davey: Could I respond to the question? There would be a role, in your scenario, for the UK Government and the UK Parliament to think about reforms to the process that Owen is concerned about. I have had a slightly different experience, where we have been able to change existing law at a European level, but I would accept part of Owen's

analysis that it is not as easy as in here, because it involves 28 countries. By definition, it is going to be a bit more difficult. However, there must be a way to improve that process. The House of Commons can look into that. Certainly, in my experience, you would find a number of member states who would willingly engage in that debate.

Q38 Craig Mackinlay: I have heard what you are saying, Sir Edward, about this relationship building. It is very interesting. Do you think it is really satisfactory to get deregulation for the UK because you have a chummy relationship with your counterpart in Germany? That is not transparency; it is not a way to run Government, as far as I am concerned.

Sir Edward Davey: It was not chummy, because I did not know the guy at the time. I built the relationships up in order to get something I thought was in the British interest, and I thought the interests of small employers, employing nine or fewer people—

Q39 Craig Mackinlay: I am very familiar with the point. Is that a way of transparently changing rules across the EU or the UK?

Sir Edward Davey: It had to go through a process. It was not just because he and I agreed and it happened. We agreed it; we proposed it to the Commission; we got it on the Council agenda. It had been debated, and it got agreement. It was transparent.

Mr Paterson: I will answer the question. I think it is a really daft way of making law. What we should have is law made in this Parliament by people who are accountable to our voters. If we make bad laws, we get kicked out.

Sir Edward Davey: On that point, it was an Accounting Directive affecting firms trading across the European Union. If we pulled out, that Accounting Directive would still apply to our firms trading in those other countries. Pulling out does not solve the problem.

Q40 Kelvin Hopkins: My impression, over many, many meetings in Brussels and elsewhere, is that the Commission drives everything. It has a will; it has a political direction; and it is designed to make sure that is not seriously challenged.

To give the example on ports, our Minister has been over there and has been building relationships, but the Commission has shown itself to be wilful. It introduced these proposals some years ago. It realised that the Parliament was not going to accept it because it did not like it either, so it put it on the back burner and forgot about it. It has brought the same thing back again, and it is all about something to do with Italian ports. It wants to apply a general Directive or Regulation or law across the whole of the European Union to get at what the Italians are doing in some of their ports. This is nonsense. We run our ports extremely well. Employers and trade unions unanimously think what the European Union is proposing is nonsense, but the European Commission wants it to go through. It is wilful.

Sir Edward Davey: I am delighted to know that our privatised port system works better than elsewhere in Europe. I am glad you feel that. I would say that it is not unusual for any Council or Westminster Government to have some civil servants or pressure groups continue to bring back proposals. They just keep bringing them back; they keep trying. You just have to push them back. It is a regular part of political debate.

Interestingly, the Italian pressure will go away if we defeat it this time, because constitutional reforms are proceeding in Italy that will give them much greater stability and will enable the centre to impose its will on the ports and on the wider energy and transport infrastructure across Italy. I imagine what they are trying to do with that proposal is get round the difficulty they have within the current Italian constitutional settlement. When it is reformed, it will take away that pressure. That is by the by. But it is not unusual for people to want to keep coming back to a point.

Kelvin Hopkins: Why can the Italians not run the ports how they want and we run the ports how we want?

Chair: We are coming to the very end. We have to move on.

Mr Paterson: There is one issue nobody has mentioned yet, and that is the influence of pressure groups. I did touch on the 85,000 emails I had on neonics. I went to an Environment Council in Vilnius to discuss the not uncontroversial issue of fracking. It was agreed that the Council would meet for lunch with no civil servants present at all. It was an entirely private discussion. We split very strongly three ways. At the time, I was very keen on us developing our own resources of gas, as were countries like Poland and Romania. Several of us spoke strongly in favour. Some were neutral and some were very strongly against. The idea was: would we be looking to draft new legislation tailored specifically to the fracking industry? In these countries and in Defra, we were trying to adapt legislation really designed for mine waste and coal mines etc.

What surprised me, in the end, were two people who I had not seen before. One of them was a British citizen, speaking up for some European banking organisation that was going to put money into fracking projects. The real surprise was a gentleman who spoke up for an umbrella group of environmental organisations. He proceeded to hold forth and, in my opinion, talk utter tosh. That was confirmed by my Romanian ally, who slapped the table and said, “This is nonsense”, and my Polish ally, who said, “This is absolute rubbish.”

I made the point to the chairman: “Where is the spokesperson for energy-consuming industry? Where is the spokesperson for the elderly person in Oswestry who is having trouble heating her house? Why are they not represented?” One fruitful area of investigation for this Committee is to see the influence of these groups, who have very substantial representation in Brussels and who receive significant funds from European resources. There is a very, very, unsatisfactory circle. They are paid to protest and push for legislation; the protest is delivered; they get more money. It goes around in a very unsatisfactory circle.

It may be satisfactory for those with their interest, but there are many European and UK citizens who suffer because of this unsatisfactory system of putting pressure on what may be vulnerable Commissioners. On the neonics issue, the Commissioner said to me, “Owen, I have got to do something.”

Sir Edward Davey: I had a very different experience to that. First of all, the reason why the business lobbies, environmental lobbies and other lobbies have been invited by the Council to be there is for more transparency, so more people can seemingly have a say and civil society can have a role. We can reduce that if you like, but there you are. Secondly, on fracking, Owen and I were totally agreed on fracking. Although I am slightly less “gung-ho” than you are, I nevertheless think that fracking has potential if done properly. I worked with

Owen and his Department to ensure that the legislation the French and others wanted, which would have stifled the industry, did not happen. We actually won on that issue.

Personally, my experience of environmental groups was maybe different from yours. I felt they played a constructive role, as did BUSINESSEUROPE. I did not agree with BUSINESSEUROPE on quite a number of issues. Indeed, I did not agree with some of the green groups on a number of issues, but having their voice—whether it is UK, Europe or local authorities—enriches our democracy.

Chair: We will bring this to an end now, but thank you very much for coming. I can assure you that the European Scrutiny Committee will look very carefully at the manner in which legislation is made in the European Union, through the Council of Ministers, the Commission, Coreper and working groups. We are going to produce a report when we have concluded hearing the evidence we are taking. In the meantime, thank you very much for coming.