



European Scrutiny Committee

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

Wednesday 27 April 2016

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Members present: Sir William Cash (Chair), Richard Drax, Peter Grant, Kelvin Hopkins, Craig Mackinlay, Mr Jacob Rees-Mogg, Kelly Tolhurst

Questions [41-92]

Witnesses: **Andrew Lebrecht**, Former UK Deputy Permanent Representative to the EU (2008-2012), and **Anne Lambert**, Former UK Deputy Permanent Representative to the EU (2003-2008), gave evidence.

Q41 Chair: May I welcome you both to this session? We are looking at the whole question of transparency in relation to the legislative processes in the European Union and in particular the Council of Ministers.

I will ask the first question. It relates to the question of transparency when acting in a legislative capacity. We have identified differences of opinion as to whether or not the Council is a legislative body in the same way as the European Parliament and other legislatures as well. What is your view on that, and where they are acting in legislative capacity should the same rules of transparency apply to the Council as to its co-legislator, the European Parliament? For that matter, I would add, compare that to, say, the Westminster Parliament, where legislation goes through Acts of Parliament with a whole series of different stages where amendments can be put down and where everybody knows what has been said and where amendments themselves are debated in Committee and in Report stage in two Houses. Compare that, for example, to a regulation of the European Union where, frankly, who knows how it has been arrived at in terms of the same kind of procedure? It is really about transparency. It is about whether or not there is a democratic deficit there, and how, and to what extent, there is a sufficient degree of proper knowledge as to how the decisions have been arrived at. Over to you. I will ask Anne Lambert to start, if I may?



Anne Lambert: I will just say to start that my experience is from 2003 to the end of 2007, so it is a little bit out of date. I will put that caveat first. Is the Council different from the Parliament, or does it operate differently? I would say yes, very much so. They are both legislators. There are two branches of the co-decision process. However, it is not like a first Chamber and a second Chamber or a bicameral system. Andy will probably want to expand on this. When I was there, the Council was 25 sovereign member states; it is now 28. It is a negotiation. The Parliament will vote on amendments that are tabled one at a time and the Council does not tend to do that. It is a very dynamic process because you have got member states. It operates in a rather different way. Because you have got these member states, it does not vote on amendments individually; it looks at them differently.

The dynamics are different because it is not like each state having a single vote. The number of votes is dependent on the size of the country, and when I was there as the UK, one of the four largest countries, it had 29 votes. That creates quite a different dynamic into the negotiation because you have got a proportionally bigger voice. You have got to take all these things into consideration. I can come on to accountability and everything else but for those reasons it would be difficult to have the same rules. Because the process is very different, the dynamics are different and the way you agree legislation is different. It would be difficult to have the same rules.

Andrew Lebrecht: I agree with all of that. I will just make a couple of additional points. The Council is not like a Parliament. It is not directly elected like the European Parliament is or like the two Houses of Congress are. It is a different model from that. The members of the Council are all representatives of sovereign Governments who are accountable to their national Parliaments. In that context, certainly as far as the UK is concerned—I can only speak of the UK—the accountability and the transparency is primarily a matter for the British Minister who is in the Council or his representatives if it is in Coreper, back to the Government in London and from the Government in London to Parliament. That is the model on which we have worked in this country for 40 years.

I do not comment on whether that works very well. What I would say is that, as far as the Council is concerned, and the accountability of what Ministers do in Brussels back to their authorities and as far as the Government in London is concerned, that, in my experience, works well and is transparent. The second point is that the Council itself, and the Ministers, since before the Lisbon Treaty and particularly since the Lisbon Treaty, is always in public session when it acts in a legislative capacity. That includes when it is adopting A points. It does not need to be in public session when it is not in legislative mode but quite frequently the Council does choose to have public open debates if it is discussion an important area or policy and they judge that it would be desirable to have it in public. Just to echo what Anne has said, it is not the same model as elsewhere and trying to have an American-type system with everything televised would require very big changes in working practices.

Q42 Chair: Some people may think that is a good idea, because you have just said that you see it as a transparent process but actually the truth is that a lot of these decisions on the evidence we have received so far are made by Coreper or the various A lists and B lists. In addition to that, the percentage of the number of decisions that are taken at first reading is pretty high, to say the least. When it gets to the question of the decisions that have actually been taken, how is anybody to know what the nature of the transparency is if the decisions have been taken in Coreper, for example, to all intents and purpose, and just nodded through by Ministers?



Anne Lambert: When I was there the figure was a bit lower, but that is fine. These things do happen. Insofar as a lot of these uncontroversial issues are delegated to the working group or Coreper, when I was doing that everything you do is totally transparent back to London. It is totally within the mandate that I had been given by the Government Department and through that Government Department and Ministers, and there was no way that anything I did was secret from London. Every Coreper is reported, with what we quaintly call telegrams, even though they were in fact sent by email. That is done within 24 hours and a lot of other issues they would know almost in real time—an hour or two later.

Q43 Chair: The decisions are being taken by telegram.

Anne Lambert: No, it is reports by telegram.

Q44 Chair: Reports or whatever you like to call them then. Actually, surely the impact, through section 2 of the European Communities Act, on the obligations that are then imposed on the United Kingdom electorate as a result of the decisions taken in the Council of Ministers, because that is a reality under section 2 that is quite clear, is not transparent as far as Members of Parliament are concerned? It may be between you and Whitehall, but it is not transparent at all when it comes to the decisions that are legislative Acts and impose legal obligations through the mechanism of section 2.

Andrew Lebrecht: As I said, the accountability goes from Brussels to Government to Parliament.

Q45 Chair: Wait a minute, Mr Lebrecht. We can only talk about accountability in terms of whether or not we have any method whereby we can make Ministers accountable. If the decisions are already law by the time they arrive and they are then implemented under section 2, you can understand why some people would say, “This is not accountable. This is not transparent. This something that has been imposed us.” When it is being dealt with by Coreper and then nodded through by Ministers, the Ministers may theoretically be accountable to Parliament but there is no means of enforcing it, surely? We know that as a matter of fact.

Andrew Lebrecht: The point that I was going to make was that you have a parliamentary scrutiny system and Ministers inform Parliament of the negotiating position that they propose to take. The instructions to people like Anne and me are based on that policy that has been agreed by Ministers. Of course the negotiation is dynamic, things change and during the course of the negotiations sometimes new elements come forward. My understanding of the scrutiny system, which may well be out of date, is that there is an obligation on Ministers to keep the Scrutiny Committee informed of what is going on. The Scrutiny Committee has opportunities to question Ministers on all of that. The accountability works; as I say, Parliament scrutinise Ministers. What we used to do in Coreper was act on the instructions of Ministers. That is how the accountability works. If you wanted to say to me that elements of that chain are not working very well, that may well be the case. I am certainly not currently in a position to judge. When I was in Coreper, there was never any doubt at all that what we were doing was acting on instructions of Ministers, who were responsible for accounting to yourselves. Anything that happened there we reported back to Ministers and indeed asked for fresh instructions if there were new developments.



Q46 Peter Grant: Good afternoon. I just want to make sure that I have understood your various answers correctly. Am I correct in thinking that although people are talking in shorthand about Coreper, which is officials making decisions, in fact and in law the decision has to be taken by a group of Government Ministers? Is there anything to prevent an individual Minister from taking advice, opinion or instruction from his or her national Government or Parliament before they agree to nod through, rubberstamp or whatever? Is it within the right and powers of each individual Minister to say, “No, I am not going to agree to that because I am not sure whether my own Parliament or Government would”?

Andrew Lebrecht: That would happen at an earlier stage, frankly.

Anne Lambert: I was about to say that.

Andrew Lebrecht: Once a negotiation comes to a head and there is going to be an indicative vote in Coreper, then we as negotiators have to go back to Ministers and say, “Which way do you want us to vote?” If the answer is, “Vote no”, then we vote no. I should say also that if there was a parliamentary scrutiny reserve on a dossier, I would never give a definitive vote because we were not authorised to give a definitive vote. That is the answer.

Q47 Kelvin Hopkins: What you say is interesting but of course, being British, we would expect that officials would follow the ministerial line; that is the way that we operate. It is very different from the way Commission officials behave. They see themselves more as politicians free to speak publicly but you would not publicly or even privately oppose a Minister because you are a public servant and an official, like a civil servant. You represent Ministers and our position in Coreper, but you are very different and behave very differently, being British, from Commission officials, surely?

Anne Lambert: In terms of the legislative process it is the Commission that propose legislation. Actually, apart from the fact that the Commission has to agree to changes to their proposal, they do not propose amendments and they do not negotiate. It is the European Parliament and the Council that do that. It is not a three-sided negotiation; it is a co-decision of the two parties.

Kelvin Hopkins: I have to say, I have seen Commission officials speaking at COSAC meetings, for example, and they sound and look a lot more like politicians than they look like officials.

Q48 Chair: What about the exercise of a veto? At what point is it possible? If you have got qualified majority voting, then as far as the procedures are concerned, there is no veto. It goes through by consensus. Everything that you have been describing is actually decided by consensus in these meetings, except that ultimately there is an accountability through the Council of Ministers to this Parliament in particular, and of course to other Parliaments as well. However, actually in practice the theory, which is that it is done through the Council of Ministers and, as you have put it, is transparent, seems to be obscured by the process of decisions being nodded through by Ministers having been decided by Coreper in the first place effectively, even though there is a doctrine of accountability. Do you see what I am driving at?

Andrew Lebrecht: There is a distinction between nodding through A points, as you say and consensus, which is about the voting. It is not true that so much goes through by consensus and you can see the A point notes, for example, which will say who has voted against, or abstained.



Can I say something about vetoes? In qualified majority voting there is no veto, by definition. However, if you seriously do not like something, you do not just sit and wait until you are outvoted. You either try to get it changed or you try to block it. That is where you build alliances with like-minded member states to try to achieve that. Certainly during my time, I can name three very big negotiations where we pulled together a blocking minority and held it to stop those dossiers getting through. Those dossiers do not appear in the statistics because they were not adopted, so by definition they do not appear. Actually, they were very good examples of the UK working with allies to stop something going through.

Q49 Chair: We are just about to have a vote but I would just like to ask one last question: you say that the Commission has to agree to changes. Does it ever not agree?

Andrew Lebrecht: It very rarely will not agree because the will of the qualified majority of Ministers in the Parliament is not really for the Commission to disagree with. The only time that it will disagree, in my experience, is if they think it is illegal, contrary to an international treaty like the WTO or if they think it offends against the institutional balance of powers in the treaty.

Chair: I hope that we have managed to get that in just before we adjourn. We will suspend the session until after the vote and there will be another vote after this vote. We may be about 20 minutes. I am sorry to have to keep you. Thank you very much.

*Sitting suspended for a Division in the House.
On resuming—*

Q50 Kelvin Hopkins: The vast majority of legislative files are ultimately agreed by consensus in the Council or its preparatory bodies, unless member states' positions are debated in public by Ministers or formally recorded in a public statement at Council level. Agreement by consensus obscures the varying positions that member states may have taken, what amendments they may have proposed, or why they changed their positions before arriving at agreement. Is this not detrimental to the transparency of decision making?

Anne Lambert: There is an awful lot there.

Chair: It is called the EU.

Anne Lambert: First, regarding consensus, certainly in my time it is the presidency who is chairing, and I was actually chair of Coreper during the UK presidency in 2005. It is nice to get consensus but it is not *de rigueur*. You count the votes. One thing that you certainly could count was a blocking minority. However, that wish to get consensus was actually a huge advantage when I was representing the UK as a negotiator. That is because the presidency's wish to get you as part of the consensus means that you can get improvements to the text. You use that leverage to get some improvements to the text that you might want. I cannot recall, during my time, that the UK ever voted in favour unless it got sufficient improvements to the text. You do not always get everything you want—it is a negotiation—but the consensus is actually helpful to get a better policy outcome.

Andrew Lebrecht: I would agree with that. The UK's policy is that we give an indicative vote at the end of our negotiation and we stick to that. If we vote in favour, we vote in favour when it is adopted formally, and if we vote against, the same thing happens. That is probably not true of all member states. It is not altogether surprising that a lot of legislation is adopted by consensus, because I would describe a typical Brussels negotiation as being one where the Commission makes a proposal and in general all member states agree



with the objectives of that proposal. It is not always the case but it usually is, particularly in the single market or the environment, the areas where we both worked.

However, even if you agreed with the objectives of the proposal, you would be wanting to negotiate improvements of one kind or another, and every member state would be on the same basis. The end game of any negotiation is often a very difficult negotiation to try to make sure you extract the most that you can. If you are a big member state particularly, a country like the UK, you usually get most of what you want. However, if you did not, you might vote against. That does not mean that you do not want the whole of that measure. The French were mentioned in an earlier evidence session. They take the view that if they like a regulation then they will vote in favour even if, in that final negotiation that might have only been on 5% of the proposal, they did not get everything that they wanted. Beneath that consensus, you have to look at the general view of the proposal and what people have been fighting for in the end game.

Q51 Kelvin Hopkins: This word “consensus” has a nice sound about it; we are all in agreement about that. However, the reality is that sometimes there is quite a lot of arm-twisting and horse-trading and pressure and smaller nations being dominated by big nations. That sort of thing goes on. As I understand it, there are no minutes taken. We do not have anything like the 30-year rule for Cabinet minutes to be reported and that sort of thing. It is very, very secretive, which makes one suspicious that it is not quite such a cosy experience as one might think.

Andrew Lebrecht: It is not necessarily cosy at all, and the small member states do not necessarily always lose out. What tends to happen under qualified majority voting is that you build alliances. Often in single market matters for example, the UK would form alliances with countries like the Czech Republic, Poland the Netherlands and Denmark—countries who saw the world as we did. You negotiate that way. Yes, you could always improve something from your point of view. You fight to improve it and that is what we were paid for: to get the best possible deal we could for the UK as the Government saw it. It was not necessarily cosy.

In terms of transparency, in preparation for this debate I had a look, and I think Anne had a look as well, at the Council Rules of Procedure. If you look at annex II of those, you will see that there is a 30-year rule, and you will also see quite a lot of commitments there to make public various documents. As it is four years since I left the civil service, I am not in a position to say whether and how well that is applied. However, if it were thoroughly applied then some of the questions that are being posed about transparency may well not be being posed.

Anne Lambert: I will just to add to that. On Coreper, again it is difficult to comment on what happens now, but their agenda is publicly available online in advance of their meetings. I think there are minutes; I have never read them but I think there are. Under the Rules of Procedure, I do not see why you cannot ask for them after the event. The Council minutes are always published. Andy and I have compared notes and looking at these Rules of Procedure—I cannot comment on how they are enforced in practice because I am not current and they were agreed after my time—there is quite a lot there that could be asked for.

Q52 Kelvin Hopkins: I have just one more question. Does practice differ across the different Council configurations? If it does, how does it differ?

Anne Lambert: We can only talk for the ones that we dealt with, which were competitiveness, transport, environment, social affairs, agriculture and fish, public health and



consumer. They have their different dynamics but the same basic procedure happens. Andy knows more about agriculture than I do, but it goes into more detail, but broadly you would say that they are broadly similar. I could not point to any significant differences. Andy, you may have more recent experience.

Andrew Lebrecht: Regarding agriculture and fisheries, first of all they meet monthly as do the Ecofin and the JHA Council and the Foreign Affairs Council, whereas a lot of the other councils only meet once or twice in a presidency. Agriculture and fisheries, which I know well, tended to take a lot more control over the agenda and got more into the detail than some other councils. If you look at Environment, for example, whilst Environment in the main did less nitty-gritty negotiation they would often give a negotiating steer to Coreper. You would see on the Council agenda, for example, a progress debate or state of negotiations; it would be so described. That would give the presidency an opportunity to ask the Ministers for a steer on perhaps the two or three of the most political of the issues that were being discussed. In that sense, different councils manage their business in different ways.

Q53 Peter Grant: I know that that the system we are looking at is not the same as a two chamber parliamentary system but it strikes me that the specific question we are looking at here is not so different from what we have just seen happening. The Minister goes along to a meeting with lots of advice and recommendations, takes a decision or is part of a decision. You have previously told us, if they are making legislation, then that decision is taken in public on the record. We went across to the House of Commons Chamber, we voted and by tomorrow our votes will be on the public record. I do not routinely invite TV cameras into a Whip's office—I doubt if any of us do—to see the detailed discussions about how political groups will ask or advise or instruct their MPs to vote, and I doubt if anyone does. However, if any one of my constituents contacted me and said, “I noticed that you voted against this or for this. Can you please tell me why?”, it is up to me to decide whether or not to tell them, and if they are not happy with the result or the answer, they have a sanction. Is there anything to prevent a Minister from being asked by Parliament afterwards to explain why he or she either supported or opposed a decision? I know it does not happen very often. Is that because it cannot happen, or is it simply because Parliament chooses not to make it happen?

Anne Lambert: In my opinion, there is absolutely no reason at all. It is not for me to comment, but there is no reason in any Council Rules of Procedure why Parliament could not ask the Minister to explain, none whatsoever.

Q54 Peter Grant: Are you aware of any member state Parliaments where that facility is used to any great extent?

Anne Lambert: I do not know. With Denmark it was before. We are always quoting Denmark.

Andrew Lebrecht: I am not aware but that does not mean that it does not happen.

Q55 Richard Drax: Did you see it moving away from consensus after the adoption of new Council Rules of Procedure in 2009?

Andrew Lebrecht: No, I am not aware of it doing so. I have to say that I do not really see consensus as being the issue. If you will forgive me, the issue for us was always the late stages of the negotiation. Again, as I said, at that point you might be arguing about only 5% or 10% of the proposal but obviously that is the most difficult bit and that is why it is at the end. Usually you would find that some member states did not get what they wanted and at



that final meeting of Coreper on the issues, some member states would say, “I vote against.” Some member states would say, “I cannot vote in favour. I need to consult my Government,” because they did not have the authority to vote in favour but their Government did not want to commit themselves. Alternatively, you vote in favour.

It may be that some countries, between that stage and adoption as an A point, decided that they would vote in favour. Frankly, I never looked to see whether that happened or not because it seemed to me that the important thing was what happened when that vote really took place. In my experience, the British Government never once changed their position. Subject to the point I made earlier about parliamentary scrutiny, I knew what my Government’s view was when I came to vote. I would express it and the Government had authorised me to vote in a particular way and the Government stuck to that. We did not change.

Q56 Chair: Could I ask a question relating to this description you have got of consensus? You have talked about alliances and you said that that was the essence of the issue. However, people know pretty much, do they not, when they get towards the point of the so-called consensus, what the outcome is going to be, which is why they arrive at consensus because they know that if an actual vote was cast, that it would go in a particular fashion? Could I ask a question about how the alliances are formed and for what purpose? Certain countries are committed to other countries and have vast amounts of economic power over those countries. It would not be surprising to discover that when confronted by a decision that was going to be taken by Germany, shall we say, in their own interests, that those countries dependent upon Germany would be more likely to look towards Germany because of the strength of the German economy and their foreign direct investment in that country.

There is a very interesting paper written by Roland Vaubel, the German economic professor from Mannheim University. He describes the system as one of “regulatory collusion”. That is maybe an emotive expression but what I am really driving at is that there is a perfectly understandable reason why these alliances are formed. It is not just on the merits. Take the ports regulation, for example, which is currently going through. We know, because we have been following it very closely in our Committee, that it is not wanted by the British Government, it is not wanted by the Opposition, it is not wanted by one of the 47 ports authorities, and it is not wanted by the trade unions. We were told that some of the countries that created the imbalance towards this going through were landlocked countries who had no interest in ports whatsoever anyway. What I am driving at is that it is not just a matter of mathematics or so-called alliances. It is actually because there are political reasons why certain countries want to achieve certain objectives, such as the fact that Hamburg and the other ports throughout the whole of Europe are actually state-subsidised whereas in the UK they are all privately owned. That creates real problems for those people who are involved in the ports industry, whether they are employer or they are trade unions. What is your reflection on that?

Andrew Lebrecht: Can I give you two answers, if I may, because it was a broad question? The first concerns blocking minorities that stick. It is quite hard to keep a blocking minority together but sometimes it works. We certainly did it. For example, when we were discussing the Working Time Directive when I was in Brussels, when we did not at all like what the European Parliament wanted to do to that directive, we held together a blocking minority, with Germany, Poland, the Czech Republic and one or two others, to stop it



happening. Sometimes you can use a blocking minority to stop something happening in its tracks. It does not happen that often but if you and others care enough, it can be done. The more interesting point is the wider question you raised of how it works in practice.

You are absolutely right that when we are talking about economic regulation, which is what a lot of the work was, member states will try to build alliances and will use levers they may have to try to exercise power. The Germans may well use the power that they have in the way you described, as will other countries. The French, for example, may well do likewise and we would do likewise. This is a huge generalisation but in the main a lot of the debates that I was involved in underneath everything were about regulation and deregulation. Within the Council there is a divide. There is a group of countries, of which the UK is of course one—I think Sir Edward Davey was talking about a like-minded group he created. There was a group that was fundamentally in favour of open markets and a deregulatory approach or a better regulatory approach. There is another group, including countries like France, Belgium, Luxembourg and Italy, whose tradition is rather more dirigiste, if I can use that word. In a sense, the negotiations were often between those sorts of alliances. Therefore, everything you said about Germany, as an example, will be true, but it is only one example of the kinds of alliances that there are. We would be talking about alliances around ideas. There are different currents, if you like, and you have to navigate them.

Q57 Craig Mackinlay: Going back to the consensus argument—I do not think we are going to leave it—Ms Lambert, you said that some Coreper minutes are actually published.

Anne Lambert: What I said is that I know that there are Coreper minutes and that the Council Rules of Procedure mean that they can be made publicly available. I must confess that I have not read them.

Q58 Craig Mackinlay: I will just back to the working groups, which are perhaps another location where differences are resolved before they are aired at the Council of Ministers. How transparent is that? How are national Parliaments possibly able to see what type of negotiations are happening there and hold them to account? That is for both the working groups and Coreper. How can the public have any sort of trust that there is accountability and transparency, and that what is being developed is being properly discussed and that it is not horse-trading, as Mr Hopkins said earlier on?

Anne Lambert: To be honest, I have not been in a working group for 25 years but it is exactly the same system of accountability in that it would be my staff representing the UK together with the Government Departments in working groups. Again they will be negotiating in accordance with a mandate agreed with Whitehall and the Minister, and then the normal process of the Minister through to Parliament would happen. They are preparatory groups to Coreper. They clear some of the uncontroversial issues and, like in most systems, they refer upwards ones that are more difficult. Coreper tries to sort some of those and refers upwards the ones that are most difficult to Ministers. All are in line and negotiate according to instructions, which obviously get developed as the negotiations proceed. New issues may come up and old issues are sorted. It is the same system of negotiating according to a mandate and transparent reporting back.

Q59 Craig Mackinlay: I suppose it is the system of how this is developed that we may be quite interested in.



Anne Lambert: Yes, I do not think that I cannot comment sensibly on that because I am out-of-date, but, as Andy explained, it is via the initial memorandum and then keeping the Committee in touch.

Q60 Chair: In his oral evidence to the Committee last week, Mr Owen Paterson, who was a Secretary of State for DEFRA, stated that most issues were decided by Coreper and came to the Council as A points. He also did not understand what came to the Council of Ministers or when. Can you explain what comes to the Council for decision and who decides in practice whether to escalate issues to the Council?

Andrew Lebrecht: Normally if there is a qualified majority of delegations in Coreper, acting on ministerial instructions of course, then there would not normally be a need for discussion at ministerial level because if you have agreement you have agreement.

Q61 Chair: He told us that he did not understand how the agenda was comprised, in the sense that he did not know how the agenda was put together and, I suppose indirectly, therefore, who put it together.

Andrew Lebrecht: Forgive me if I misunderstood your question. The Council Rules of Procedure require that a draft agenda is circulated to the member states I think two weeks or 16 days before a Council meeting. It then has to be adopted by Coreper. What would happen in our case would be that we would take delivery of that agenda. We would send it back to the lead Department—DEFRA in these circumstances—and if DEFRA Ministers were unhappy with the agenda, so, for example, there was a point that they wanted to discuss that was not on it, we would receive instructions from them to ask for that to be put on the agenda. Under the Council Rules of Procedure, if you meet the required time limit, you can insist that a point is on the agenda.

Q62 Mr Rees-Mogg: This is going below things coming onto the Council agenda and the information that we have received mainly through press releases, that Coreper has agreed on behalf of the Council its negotiating position. These Coreper agreements then do not always have a formal sign-off in the Council. Is that a growing trend or are they always signed off in the Council?

Anne Lambert: They will always be signed off in the Council. It may be, as we have said, an A point, which is something without discussion. However, it will always formally be signed off by Ministers.

Q63 Mr Rees-Mogg: So your negotiating position is agreed by Ministers and then comes to them for the formal recognition at the end of the process in the Council.

Anne Lambert: Yes, I negotiated within the mandate that I had been given and if it was consistent I would indicate in Coreper, “Yes we are happy with this text.” Then formally it would go to the Council to be signed off.

Q64 Mr Rees-Mogg: How much of the mandate that you have got was handed down on high—Whitehall said, “Go” and you goeth, and how much of it was a discussion between you and Whitehall as to what was achievable and how best to manage it?

Anne Lambert: I could not do that mathematically.



Q65 Mr Rees-Mogg: No, I am not asking for a percentage but just impressionistically.

Anne Lambert: If it is an uncontroversial issue there is probably less discussion because it is fairly straightforward. It could be a more difficult issue; Andy has mentioned the Working Time Directive, which I spent four years working on. That was subject to a lot of intensive discussion around that because it is a dynamic process. It varied.

Q66 Mr Rees-Mogg: Would it be fair to say that on the minor issues it was more lead by you on Coreper as to what could be done, and that your influence on Ministers was quite significant, and that, for the other way round, for the very big issues, it was very much a direction from Ministers?

Anne Lambert: No. The minor issues I probably did not get that involved with in Coreper. If you have got clear instructions and it is not controversial it will go through; nobody is going to stop it. As you have to prioritise, I probably prioritised my time to discuss and to give information back to Whitehall. We were there and knew what was going on as you are talking to people all the time. You can sense, “Ah, the French are moving,” and so you talk and feed back to Whitehall so that they can take it into account in developing their negotiating position.

Q67 Mr Rees-Mogg: I think to some extent you may be understating the importance of your role as to what you were doing. You are saying it is all Whitehall-led, but actually it is a dialogue, is it not? It is you saying to Whitehall, “If you do this, you can achieve that,” and then Whitehall has to decide whether it is willing to do that. There is a bit of guidance and help coming from Coreper.

Anne Lambert: We hope we added value. A lot of it is knowledge of where other member states are.

Q68 Mr Rees-Mogg: Okay, but do not be too modest about it, because it is important to understand how it works. Within a broad mandate, Coreper is trying to achieve as much as possible of what the Government want, but has a good deal of discretion and counter-response to that to lead the argument with Whitehall.

Anne Lambert: Sometimes we had more discretion than others.

Andrew Lebrecht: All I would add is that it can be two-way in a different sense as well. I can recall situations—let us talk about the Working Time Directive because everybody does—where things were getting very difficult. We thought a particular member state and ally might be wavering a little bit. We would go back to the Minister and we might say, “You need to talk to your opposite number,” in Berlin, Warsaw or wherever it is, or even maybe that the Prime Minister needs to talk to another Prime Minister. In a sense, it is a team effort. We were only the negotiators but we were picking up information and we had to feed that back.

Q69 Mr Rees-Mogg: Did either of you ever think that it was worthwhile suggesting the Luxembourg Compromise, or is that now a completely dead matter?

Anne Lambert: This is 2003 to 2008. We certainly understood it very well. The French understood it very well. What I found—and there was certain language used—was that some of the new member states did not understand it at all. It did not have any resonance and I could not remember a new member state in Coreper using the language; I looked at my



French opposite number and we both went like that. They had no idea what they were saying. It might be withering because it is just a bit old.

Andrew Lebrecht: I would almost have regarded it as a failure if we had had to have recourse to the Luxembourg Compromise. In my experience we very rarely voted against because we either won the argument or we successfully blocked.

Q70 Chair: I was just going to ask one last question on this issue. Should the Council be issuing press releases—we have seen them; they exist—saying that a decision has been reached in Coreper if that is not the case? We have actually seen them and we are getting rather concerned about this. Maybe you can comment; perhaps it is a recent position that did not happen when you were there.

Andrew Lebrecht: I am not sure that it did happen when I was there. All that I would say is that if they say decisions, it ought to be, at the very least, decisions ad referendum.

Q71 Chair: This is the sort of Council press release that we have seen: “Coreper agreed on behalf of the Council its negotiation position on” a particular subject. That is just the way we have observed them from the press releases themselves. We have a national parliamentary office in Brussels now, as you probably know, and actually they are very attentive to these questions, and these press releases and they end up in our office.

Anne Lambert: I cannot comment further on that.

Chair: It may be more recent.

Q72 Craig Mackinlay: I have a proper working example of something that may have happened recently. We do not get the minutes so we do not know really exactly what happened. You had experience of agriculture and fisheries years ago. For instance, this time round there is scientific evidence from UK authorities that thornback rays are very plentiful. There was an argument that skates and rays are in the wrong band because there are so many. I would have thought that the instruction from our Minister—and this is guess work—was that we want thornback rays back, or a lot more of them, and we want more bass because there are plenty of bass around our shores; local scientific evidence is showing. How did that go through the process to say, “No extra thornback rays, no extra bass”—there is actually a six-month complete ban on them—“but you can have more plaice?” From what the Minister wanted, how did we end up with what we ended up with? We have seen no transparency. What I know the Minister wanted to what we got was completely different. Was there a horse-trade to say that, “No, you cannot have that but you can have a bit more plaice?” I am trying to give an example. Where is that happening? Where is that horse-trading going on? Is that at the working groups or at Coreper? It just seems to me that what our Minister wanted and what we got were completely different things.

Andrew Lebrecht: That is a very difficult question to answer.

Craig Mackinlay: I am just trying to give an example of something that I know of.

Andrew Lebrecht: For fisheries, nearly all of it is done at the level of Ministers. Coreper does hardly anything on fisheries. That is just the tradition of the Fisheries Council. I would have thought a deal like that or an arrangement like that will have been done at ministerial level.

Q73 Richard Drax: One of Dr Sara Hagemann’s recommendations is to make the proposed amendments put forward by Government on a particular proposal public—in



particular by Coreper. How might the release of the meeting summaries and the disclosure of individual member state positions and key sticking points earlier in the decision-making chain affect the speed, quality and public accountability of the legislative deliberations in the Council?

Anne Lambert: We both spoke earlier about the dynamic process of negotiation in Coreper. It would be difficult to have any disclosure in real time. To be honest, some people think that in Coreper there are formally tabled amendments in advance of the meeting and then you look at each one. In my day, it tended to be a lot more informal than that. If I had wanted to table amendments, they might just be copies that were circulated on the day or another member state proposes amendment in the meeting and you have to think very fast, “Perhaps I can use that and I can propose an amendment to an amendment and that would help.” It is a very dynamic process and it would certainly disrupt that decision-making. If I may say so, if we look at the exercise from the UK’s point of view, my job was to get the best outcome. If you formalised it I would not have been able to exercise the 29 votes in a soft-power way to get as much.

Q74 Richard Drax: You are negotiating on your feet.

Anne Lambert: Yes.

Q75 Richard Drax: That gives you quite a lot of power, does it not, although you are presumably operating within the remit that you have been given?

Anne Lambert: Absolutely. If you had no power and you just sat there and read out your instruction, you do not get anything. That being said, once the decision has been taken we refer back to these Rules of Procedure, which, I have to say, are new to me because they were brought in after my time. There seems to be quite a lot of transparency after the event. Once Coreper and the Council has decided, according to my reading of the Rules of Procedure, although as I said I do not know how they operate in practice, there is a possibility of getting quite a lot of information.

However, your colleague said that you are not privy to the discussion in the Whips Office. These preparatory bodies will mean it is difficult when you are negotiating on your feet to actually have it all in advance.

Q76 Richard Drax: Regarding my colleague’s example about the fish, if you are being told, “You cannot have any bass, sorry, but we will give you this,” you then may be in a position to say, “Okay, we will have that. That is fine.”

Anne Lambert: As Andy said, fish is slightly different, because it is never done like that. If it was within the mandate—you have to reach a judgment as to what is consistent with the instructions you have been given.

Q77 Richard Drax: It could potentially be quite a haphazard affair, could it not, in the sense that amendments are produced out of the blue by one party or another and collaborations are done?

Anne Lambert: You have to be very clear about what your instructions are and you have to be in command of the dossiers to be able to react and, if necessary, send the desk officer out to ring London quick.

Q78 Richard Drax: Mr Lebrecht, you have not had a chance to answer that question.



Andrew Lebrecht: I do not have a great deal to add. On this business of Coreper negotiation being dynamic—

Q79 Richard Drax: Why do you use that word? What does that mean, “dynamic”? Does it mean you are dynamic or the debate is dynamic? Why is it dynamic?

Andrew Lebrecht: If you were to look at the European Parliament, for example, the amendments are tabled in advance. They are voted on according to a pre-decided procedure and then the meeting ends. In Coreper you never really know what is going to happen. The presidency is looking to find a basis for agreement and the way forward. He does not know and you do not know beforehand quite where that is going to be. The different groupings within Coreper are juggling for position. You are going into a negotiation with a lot of variables. You know what amendments you have put down. You may not know what amendments other people are going to put down. You do not really know. The presidency, if you like, has to make its mind up during the course of the discussion where it is going to find a middle road that finds a big majority. That is what I mean by dynamic.

All I would say in defence of that is this: you are talking about negotiations between 28 sovereign countries. Sometimes when countries negotiate, even if it is only two of them, it can be very difficult indeed, as we see from trade agreements, for example. For 28 sovereign countries to reach agreement you need to have a dynamic system and within that dynamic system you are successful if you can be effective in building alliances, coming forward with good ideas, and being able to respond quickly as the negotiation develops. In my experience—and this is not in any way meant to be a reflection on myself—the British administrative machine is pretty good.

Q80 Richard Drax: Or may be having to compromise to the disadvantage of the United Kingdom on some occasions.

Andrew Lebrecht: In a negotiation amongst 28, you always have to compromise.

Q81 Richard Drax: Sometimes to the disadvantage of the United Kingdom.

Andrew Lebrecht: It depends what you mean by “disadvantage”.

Q82 Richard Drax: Sorry to interrupt you. If we were a sovereign state, for example, and we could make our own rules and decisions for the benefit of our country. You are negotiating a position on behalf of the Government where sometimes you have to compromise and we do not get what is best for us.

Andrew Lebrecht: In those circumstances, what we would not get is Europe-wide legislation that reflects what we want. We would have legislation that only reflects our own circumstances. If we want to be trading in that market and exporting in that market, it is in our interest, clearly, to have some influence over what other people do as well as them having an influence over what we do. If I may just make a point, forgive me. As a negotiator what we would always see is that where we had to compromise was where Government had some flexibility, if you like. We safeguarded what Government really thought was important. That was our job.

Q83 Richard Drax: There are 28 different countries and plans for more. You must have both, presumably, gone into negotiations knowing full well that you were never going to get what you wanted because the countries had different cultures, histories, languages and



economies. There are so many different things; I am surprised that you did not go in thinking that it would be a miracle if you got out of there with anything, frankly.

Anne Lambert: We are always optimistic. I would never be so defeatist because, as Andy has said, you can actually get a lot. You build alliances. Everybody is different so everybody wants something different. You build the alliances and you gradually arrive at X, and the UK is a big country so we have a lot of influence. I had 29 votes to deal with and it would be much easier than if you were Luxembourg and had one or two. It is a lot easier. You can get some.

Q84 Richard Drax: The three-crop rule, for example, is a cracking example of a compromise that has put us at a huge disadvantage.

Anne Lambert: I do not know.

Q85 Richard Drax: Is that not an area of your expertise?

Anne Lambert: That was not during my time.

Q86 Peter Grant: If you want to know what is meant by dynamic negotiation, perhaps look at the static negotiation of the House of Commons, as it is sometimes known, because we talk all day and then we vote, and very few people will change how they were going to vote from the start to the finish.

That perhaps leads on to potentially quite an important point. The method of coming to the decisions that you have described may be seen to be the only way that it is going to work if you have more than two or three parties to a discussion at any one time, because it has to be semi-formal, it has to be fluid, it has to be by agreement and by negotiation and consensus where possible. The UK parliamentary system is famously or infamously designed to be non-consensual. The House of Commons Chamber is designed to keep us two sword-lengths apart to stop us killing each other. The electoral system is designed to produce a majority Government even if they only get 35% or 40% of popular support. Is the fundamental problem simply that we are so used to it and our Ministers get to be Ministers because they are good at operating within a confrontational system? Is the problem simply that there is a culture shock when UK Ministers get to Europe? The Ministers who come from more consensual parliamentary systems are maybe better able to play the system than our Ministers, and they are at an advantage because they are playing by rules closer to the rules that they used to, rather than by the set of rules you get in the UK Parliament.

Andrew Lebrecht: In my experience, and I have worked for Governments of every colour, our Ministers are pretty good. If they need to adapt and learn, they adapt and learn quickly. I do not see any systematic disadvantage.

Q87 Peter Grant: Is a factor that creates the impression among the UK public and UK parliamentarians that it is a system that is opaque and secretive simply that it is a system that maybe we do not understand as MPs and that the public do not understand, because it is not the system that they see on Parliament television every day of the week?

Anne Lambert: There is probably quite a lot in that. Everybody needs to do their best to explain it a bit more. It is more complicated to explain because it is not just one against the other, but let us all try to explain it.



Q88 Chair: In that context, you mentioned the Whips. I was very interested in that remark because decisions are taken as a result of a control-and-command system. You have the legislation Committee, which decides on the formulation of a Bill with parliamentary counsel and so on. People know where they are going at that point in time and then it gets into the legislative process, then you have all of the amendments in the Committee stage and the Report stage. People know what they are doing. Ministers are certainly accountable to Parliament and have to answer the questions on the Floor of the House. What you have described, however admirable it may seem to those of you in the system, leaves me with a sense that actually there is an enormous amount of decision-making that is taken, as I have put it before, in unsmoke-filled rooms, albeit that you will say that it is being done through the accountability of Ministers who in turn are accountable to Parliament. You described the system we are in, in reply to Peter Grant just now, as being one that a lot of people do not understand as well as perhaps they should. The question is: what is it that they are failing to understand? Is it something that is sufficiently transparent? Is it something that actually people can identify with, particularly as the end results under the European Communities Act is that they have to carry out the decisions that are taken in the system that you have described?

Anne Lambert: I am not sure. The only thing that I would say is that multinational negotiations are almost by definition more complicated than the British parliamentary system with limited parties.

Q89 Chair: That is a very fair way to put it. The question is whether it is better? Is it more democratic and is it accountable? I suppose that is really the essence of my question and the Committee will ask their own.

Anne Lambert: We hope that we have explained ways that we think it is accountable. You can always improve transparency. Having read about it a bit, although I am not the expert, it looks as if there are now steps in the right direction.

Q90 Peter Grant: You have mentioned that we all need to do more to help people to understand what is happening. Can I say, Mr Lebrecht, I found the paper you submitted almost frighteningly understandable, almost as if I was beginning to understand how the EU works? I really do need to get out more. One of the comments that you have made was that member state Parliaments have the right to be kept informed about what is being done on their behalf and that it is up to this Parliament and the other 27 member state Parliaments to put procedures in place to make sure that they are kept informed and that they do hold Ministers to account. What is your assessment of how effectively the UK Parliament does that just now? I know that you have previously said that you do not know exactly what happens in other Parliaments. Are there examples of other EU member state Parliaments that we could learn from, and are there things that you might suggest either to us or the House of Lords or to others within the parliamentary system? Are there things that the UK Parliament could be doing better so that Parliament, and therefore the public, have got a better idea as to what is being done on their behalf?

Andrew Lebrecht: As we have said, we have both been out of the system for a little while, but the Senior European Experts group has submitted a paper, and we are both members of that. It draws on recommendations from Westminster, Parliament and from the Centre for European Reform in particular. It draws on ideas that have been around and clearly those ideas illustrate ways in which Parliament could in fact hold Ministers more



effectively to account and perhaps at the same time encourage debate within the country—things like having more debates on European issues and closer involvement, perhaps, of some of the specialist committees. I am sure Ministers could be asked to be fuller in their reports back from Council. It seems to me as an outsider that there has to be scope for improvement in that area.

Q91 Chair: Could I just follow up on that? In this paper to which you have just referred—and thank you very much for sending it—I was rather interested that it has been compiled in part by the Centre for European Reform, with Charles Grant and all that. I know him very well of course. What it says is that the Treaty on European Union specifies that, “The functioning of the Union shall be founded on representative democracy.” It then goes on to say, “With citizens being represented directly by the European Parliament and indirectly by their national Governments, acting in the Council and European Council, accountable to their national Parliaments.” Moreover, the Treaty states, “Decisions must be taken as openly and closely as possible to the citizens.”

Now, we are obviously looking at all of this against that background. It is very helpful to have this set out because actually there are different types of representative democracy. You have some countries that are run by proportional representation and then, in addition to that, you also have decisions that are taken on a much more direct control-and-command system. They are taken, for example, by the United Kingdom, where people are always asking awkward questions. I just wonder whether the references to representative democracy are in fact being taken as openly and closely as possible to the citizen, because we understand that only 43% turn out in European Parliament elections. There is a minus 60 distrust factor in relation to the European institutions; that does not sound terribly much to me given the enormous amount of referenda that have, initially at any rate, as with the last recent one in Holland, gone against the Government in question. There is an element of disturbance within the European dimension, which is not really as obviously, openly and closely as possible to the citizen. I just wondered if, finally, you might like to comment on that general proposition that there is something really going quite wrong, which is reflected by turnout and so on, in relation to the workings of the European Union. There are protests and riots all over the place—euro crisis. In a more general sense, what is your take on all of that? Do you really feel that it is a good, stable, representative, democratic system? Is it working as it should?

Andrew Lebrecht: I would not want to argue that the European Union is working perfectly. I am not sure I would want to argue that Westminster is working perfectly either. One can always look to improvement. We have talked a lot about openness and, as that paper says, there is a lot of scope for political representatives to enhance the debate in the member states. In terms of closeness to the people, that is about subsidiarity.

Q92 Chair: That does not really exist. They keep on talking about it. Not one single piece of subsidiarity has ever been identified to me in any session at any time and I have been on this Committee for 31 years. Since subsidiarity was concocted in the Maastricht Treaty, I do not think I have ever seen or heard anyone properly explain an example of subsidiarity in practice.

Andrew Lebrecht: Subsidiarity is often about what you do not do rather than what you do do. Let me give you an example: in the recent reform of the common fisheries policy, one of the major criticisms of it has been micro-management by the Commission. In the recent reform, which was largely pushed by the British Government with some allies, it introduced a



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provision whereby power was taken away from the Commission and given to groups of member states with responsibilities for particular fishing areas. For example, in the North Sea, the UK, Denmark, Germany and France, those countries with an interest in the North Sea, would agree conservation measures. That is a concrete example of powers being taken from the Commission and given back to the member states.

Chair: On that note, we will thank you very much for coming. We will consider your evidence in the light of the other evidence that we have received. I wish you a very good afternoon.