



European Scrutiny Committee

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

Wednesday 4 May 2016

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Members present: Sir William Cash (Chair), Richard Drax, Kelvin Hopkins, Calum Kerr, Mr Jacob Rees-Mogg, Kelly Tolhurst, Mr Andrew Turner, Heather Wheeler.

Questions [93-116]

Witness: **Rt Hon Dame Margaret Beckett MP** gave evidence.

Q93 Chair: Welcome to this session, Dame Margaret. It is very nice and good of you to come. We are doing this inquiry into transparency and accountability and also with specific reference to the Council of Ministers. I shall ask the first question. We have already had a number of people in already, including some former Secretaries of State. 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. What is your view as to whether or not the Council is a legislative body in the same way as other parliaments? When acting in a legislative capacity should the same rules apply to the Council as to its co-legislature, the European Parliament?

Dame Margaret Beckett: First I ought to say at once that I am not in any way, shape or form a lawyer, so I am not perhaps qualified in one sense to answer your question. It does seem to me, yes, that the Council is, at least in some degree, a legislative body. Perhaps I should preface that by saying different Councils do seem to operate in a slightly different way and deal with different ranges of issues. I served for a number of years, for example, on the Agriculture Council and there was not any doubt there that we were making binding agreements about particular agricultural regimes and so on. In that sense, yes, it is. Certainly some Councils, perhaps when acting on particular issues, are acting in a legislative capacity I would say.

As to the question of transparency, precisely for that reason I think this can be a difficult issue. Of course we are all in favour of transparency but I recall having a bit of a dust-up on the Foreign Affairs Council, which, at about the time that I joined it, was starting to say things about how all Councils should operate with complete transparency. It was about pointing out to then 10 colleagues around the table that if you tried to have full transparency on all of these delicate negotiations you would not necessary make very much progress and,



secondly, that the Foreign Affairs Council itself, when it had a difficult and delicate issue to discuss, did it over lunch where no outsiders were present. They were absolutely in favour of transparency but that was not the way the Foreign Affairs Council worked at all.

Q94 Chair: I would like to ask you a further question on that. Of course when people are making decisions as to what policy should govern a Bill in Parliament, you have the Legislation Committee, of course, which then looks at the proposals that have come out of the decision of a Cabinet, but that is not a legislative function. That is only when it reaches the House of Commons as a Bill. The test of transparency, as far as the UK Parliament is concerned—and I am sure this applies to many other national parliaments as well—is that basically it goes through a whole series of procedures, which include amendments and so on. However, it is all there and it is in Hansard, whereas in a way, if I could come back to your point, what I think you were saying rather clearly is that it is transparent in theory but in practice it does not work out that way, from your experience. Would that be a fair way to put it?

Dame Margaret Beckett: It varies. As I say, the Foreign Affairs Council is very careful about these things for very obvious reasons. There are other Councils where there are fewer problems. For example, I recall doing the sugar negotiations through the night and over a number of days in the Agriculture Council. I recall my colleague who was then the Commissioner observing that sugar had not been renegotiated for 40 years and she knew why now, and it would be another 40 years as far as she was concerned before we did it again. We had to ask all member states to make what for some were quite difficult decisions in order to get any kind of properly reformed sugar regime, which had implications for employment and so on in their countries.

These are not easy issues and people had to genuinely try to get good common ground and a better sugar regime. If you try and do that in full public gaze you would never get agreement because all of the vested interests would all pile in and say “You cannot do that.” You would never make any progress. The harsh facts of life, I am afraid, are that, yes, you have to have proper transparency in it being known what decisions have been reached and then Ministers being asked, as they all are, to defend and explain those decisions. That is another matter from having everybody looking over your shoulder all the way through the negotiations.

Q95 Kelvin Hopkins: Margaret, the vast majority of legislative files are ultimately adopted by consensus in the Council. Unless such files are debated in public by Ministers, or member states’ positions are formally recorded in a public statement, agreement by consensus masks how agreement was reached and what changes or concessions were made and to whom. How does this impact the accountability of, and public trust in, Council decisions?

Dame Margaret Beckett: I suppose there will always be aficionados who would want to know the nitty gritty of precisely how people came to different conclusions and how final agreement was reached. On the whole I would have thought that most people would think that what was important was that what had been agreed was known. The broad parameters I would think in most member states, and certainly in this one, are open to Members of Parliament to get some steer on from Government Ministers. I seem to recall going to the relevant Select Committee and giving evidence about what we were trying to achieve.

I remember when we did the CAP reform negotiations, the Agriculture Select Committee were very critical about what we were trying to achieve and absolutely confident that we would never do it, which turned out to be a mistake. There is a proper process but I repeat that process cannot absolutely make the Committee or the Parliament or the public the negotiator. In the end if you are trying to reach agreement you have to do it by seeing where



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the room for manoeuvre is and where the common ground lies. That can only be done by the people that are actually negotiating.

Q96 Kelvin Hopkins: I have to say I do remember asking you questions about the CAP reforms in the Chamber a long time ago now. This masking of what is going on, horse-trading and pressurising of smaller countries by large, powerful countries on whom they may be dependent for other things—all of that is hidden. It makes some of us a bit more suspicious about the conclusions than we should be, perhaps. Can you comment on that?

Dame Margaret Beckett: In the end, countries have to come to conclusions to get the best deal that they can. It is a bad negotiation that really sacrifices somebody. Most of the time you cannot get an agreement unless everybody has enough. Everyone has to have something to go home with. Nobody can be put in a position where they cannot go back to their Parliament and say, “I have agreed to this” because they would be for the chop. You have got to find that maximum amount of common ground if you are to be able to get agreement.

Q97 Richard Drax: Good afternoon. I have a very small point before I ask my question which leads on very nicely from what you have just said. You said decisions are made over lunch. Is that right?

Dame Margaret Beckett: That was the Foreign Affairs Council. It is not necessarily decisions, but just that difficult issues are aired over lunch rather than in Council.

Q98 Richard Drax: What sort of lunch would that be? Would that be three courses and wine, or would that be a sandwich and a glass of water, just as a matter of interest?

Dame Margaret Beckett: It is not normally a sandwich; it is normally a lunch.

Q99 Richard Drax: Three courses and some wine and all the rest of it.

Dame Margaret Beckett: Possibly. I do not know what they do nowadays.

Q100 Richard Drax: It is probably lobster now, I suspect. Picking up on the last point you made, did you ever acquiesce to a measure that you considered would be harmful or detrimental to us in exchange for secure leverage on another matter, or would you have voted always against that? You did say that no one could leave without something, so did they ever place you in a situation where you came out thinking “Oh dear, I really have sold the UK short because I have got something else.”

Dame Margaret Beckett: Never.

Q101 Richard Drax: You never felt that.

Dame Margaret Beckett: No.

Q102 Richard Drax: I am not trying to trip you up. I am just picking up on your point where you said that everybody had to leave with something, so that means not everyone got what they wanted, so ultimately if you turn that on its face that means that people left having not got what they wanted. Do you see what I mean?

Dame Margaret Beckett: One of the most important things to my mind for you as a negotiator is to be absolutely clear about what you are trying to get and in what order of importance, and what the things are that you can afford to concede or not to come away with as long as you get X. That has to be part of your preparation for the Council. Nobody is going to necessarily get 100% of everything that they would like. The thing I always used to say to civil servants before any negotiation was, “I want you to be absolutely clear with me about



what we are trying to get here, what we are likely to get and so on. You have got to be honest with me. I do not want any nonsense about you saying, 'It is absolutely essential that you get so and so, Minister' and then I am saying, 'I do not think I am going to get this', and you say, 'Oh, never mind. It does not matter all that much.'" It has got to be absolutely clear. You have to know just what you need to have and just what you can afford to concede.

Q103 Richard Drax: Everything in your time that was conceded was not detrimental to the United Kingdom in any way, shape or form.

Dame Margaret Beckett: You are asking me for a very extravagant answer. I am not saying that I always won every single thing I went into a negotiation for. What I am saying, though, is that I never agreed to a deal that I thought on balance was in any way against the interest of our country or of the relevant interests within our country.

Q104 Richard Drax: One final question on this. Now we are 28 members, do you think there is ever a point that you could make any agreeable negotiation come out the way that you want it to when there are so many diverse opinions that, in my view certainly, mean it is highly unlikely you are going to get anywhere near what you want—i.e. it is a system that is doomed, in effect, to fail?

Dame Margaret Beckett: It depends. If I may say so, you are taking it to a rather extreme point. As I say, no realistic negotiator ever goes into a discussion expecting to get 100% of every single thing that has ever occurred to anybody that they would like. The question is: what is it that is really important, what is it that you need and how much more can you get that you do not need but it would be nice to have?

Q105 Chair: Dame Margaret, you were talking about the national interest and that you would not agree to something that was against our national interest. Of course this was anticipated in the White Paper in 1971, which was the prelude to the debate and the decision by Parliament by narrow majority to go through with the enactment of the European Communities Act 1972, section 2 of which says we will take on board and accept the obligations under section 2. Of course, it also said quite clearly in that White Paper that we had to retain the veto because otherwise it would be contrary to our vital national interest. Those were the kind of issues that you were alluding to, rather than some fairly unimportant matter by comparison. It also went on to say that to do otherwise—in other words, we need to keep the veto—would also endanger the fabric of the European community itself, which I thought was rather a wise remark. Quite clearly, if you have countries being forced into things by majority vote or by consensus, the result of which is that it goes through and becomes their law through, in our case, section 2 of the European Communities Act, and people do not want it, then quite clearly there is a very big issue of principle and of practical effect on people's daily lives.

I will quickly mention the ports regulation, which is one that has given quite a lot of trouble to this Committee. We know there are 47 port employers. We are an island. We depend on the lifeblood of imports and exports largely by freight and by ship, and there are 47 port employers, and every one of those is against this ports regulation. Every trade union is likewise against. There are at least 350,000 jobs at stake, or at any rate involved in the outcome of that. The Government do not want it and the Opposition do not want it. That seems to me that whatever consensus is going on in these un-smoke-filled rooms on that issue is really running against certainly the vital national interests of the United Kingdom given the array of opposition there is to it here. Do you have any thoughts on that as an example of something that is causing difficulties in relation to consensus and that to have a veto would be one way of dealing with something of that degree of significance?



Dame Margaret Beckett: Of course, Sir William, as you will recall—and I say this with all due respect—it was not we who gave up the veto, something which I have from time to time had cause to remind various colleagues. I take your point entirely. I am aware broadly, as many are, of the issue of the ports regulation. I have not studied it. It is not an area in which I have ever been involved, and there can be genuine difficulties. As I recall, the then Conservative Government gave up the veto under Mrs Thatcher because the consequence was to get the deal for the single market, and it was thought that this was, in the long term, very beneficial to the United Kingdom. With the best will in the world, it seems to me that is a track that is difficult to reverse.

I take your point of course, and I particularly take it in the sense, as was mentioned a few moments ago by Mr Drax, the more member states there are the more likely it is that some particular issue may cause difficulty for a particular member state. This is the process of international mutual living whether we are in the European Union or outside it. These issues will arise and they will cause difficulties, and one has to try to do the best one can to negotiate their way through it.

Q106 Chair: I do remember in 1986, because I was on this Committee even in those days—

Dame Margaret Beckett: I remember it well.

Chair: I put down an amendment to the Single European Act that in summary said that nothing in this Act shall derogate the sovereignty of the United Kingdom Parliament. I was not even allowed to debate it. It was not selected for amendments and I had quite a big row over that.

Dame Margaret Beckett: It was thought to be contrary to the spirit of the legislation.

Chair: That was exactly what I was told, but anyway we have now discovered that we are at the mercy of all this majority voting.

Q107 Heather Wheeler: Thank you very much for coming and talking to us today. Because of your vast experience you will know that many legislative files are adopted by the Council as “A” items, meaning that there is not discussion given to prior de facto agreement in the working groups or Coreper. We have had two experts from the single European expert group, Andy Lebrecht and Anne Lambert. They stressed to us that there is a clear chain of accountability from UKREP to Whitehall and Whitehall to Parliament, and that UKREP officials operated within the negotiating mandate conferred on them by Ministers. Where I am getting to is asking how much involvement you had in signing off the positions taken by the officials at the pre-Council stage in working groups or Coreper? During your time as Minister, what types of items on a Council agenda were “B” points and therefore debated, so not already signed off?

Dame Margaret Beckett: On the last bit I am afraid memory does not serve. Can I take a step back and say you could not have two better people to have given evidence to this Committee than Andy Lebrecht and Anne Lambert? Not only are they both extremely experienced but they are both absolutely brilliant negotiators and colleagues and servers of UKREP and so on. Yes, I completely endorse what they say. They are also both people who would always be meticulous about keeping a Minister informed if there was any difficult issue and of explaining exactly where we had got to on a particular negotiations, why, what the problems were and so on. They are very thorough people. In fact, I recall a very senior official from the Foreign Office observing that Andy Lebrecht in particular ought to run seminars for the rest of Whitehall as to how to negotiate in the EU, which I have to say, since at that time he was at Defra, might not have gone down very well with Foreign Office officials. They are both people whose negotiating skills are absolutely expert.



I frankly say I just do not recall offhand what kind of things might otherwise have been “B” issues, but it would have been anything that caused concern. As I say, they are both people who were meticulous in keeping Ministers informed because inevitably sometimes something that makes officials think, “That sounds alright to us”, might well make a Minister say, “Hang on a minute”. Neither of them would ever wish to cause that kind of embarrassment.

Q108 Mr Turner: On the basis of your EU negotiation experience, how do you think greater transparency in the Council might affect the speed of decision-making, the quality of policy outcomes or the public accountability of legislative deliberations?

Dame Margaret Beckett: A lot depends on what the process is. If the process is one of a general, “This is where we are; this is what we are trying to achieve,” and then you would report back if anything key has changed, I do not think that need necessarily affect the speed or the quality of the outcome particularly. If on the other hand people want to try to follow the day-to-day nitty gritty of what is happening in negotiations then clearly that could. You did sometimes find that people would say, “I have to report back on this” before they could clear something. Generally speaking as long as there is an understanding that scrutiny is not the same as substituting one’s self for the work that is being undertaken then there is no reason why transparency and effective pace of negotiation and a good outcome of negotiation should not go hand-in-hand.

I can recall a different Select Committee of this House where occasionally a member would want to second-guess the decisions of the Department. If you have got somebody that wants to do that then of course that is going to have a bad outcome on speed and policy outcome. However, as long as there is a sensible understanding on both sides that nobody is trying to keep things under wraps that should be known, and nobody is trying to substitute their judgment for that of the person that is trying to do the negotiation, then I think it can work.

Q109 Mr Turner: Would the disclosure of individual member states’ positions put a block on any diplomatic horse-trading between unrelated dossiers?

Dame Margaret Beckett: It could. I am making the assumption that we are talking about the conduct of a particular piece of negotiation and how that might work and does work. Obviously, as I said about the sugar negotiations, if you had too much detail of the to-ing and fro-ing of what people were trying to achieve when you were still at a very delicate and tenuous stage in negotiations, then it could indeed scupper the negotiations and make a difference to the outcome. If you are trying to get sensible reform and sensible agreement to move forward, then that is something that is undesirable, it seems to me.

Q110 Mr Turner: Can I ask one final question, which is about the Prime Minister’s negotiations over the past four or five months, which led to four points that he believes have thoroughly reformed Europe? Do you think he is right in that?

Dame Margaret Beckett: He is right that they are progress. There is other progress that I would be very happy to see. Sometimes we are not letting go of a negotiating goal. You have to recognise that now is not the time for a whole variety of reasons, and so that is then something that you return to. I would personally like to see the EU being less austerity-minded and less rigid in some of its approach to economic policy. This may not be a favourable moment to assume that such moves forward can be taken. That does not mean that you abandon them forever.



Chair: I shall be asking the Prime Minister a question on exactly the same lines as Andrew Turner's in about an hour and a half's time because he is appearing before the Liaison Committee about the negotiated package.

Q111 Kelly Tolhurst: Thank you for coming; it is good to have you here. In your vast experience, what, if any, changes would you potentially recommend in order to improve the Council's transparency? In particular, is there any information that should be made available? If so, when should that be made available and by whom?

Dame Margaret Beckett: I have not been following sufficiently closely all the processes of negotiation of the last few years, but in general it seems to me that we have quite good processes of scrutiny in this Parliament. There is the opportunity for Ministers to set out what they are trying to achieve and the general direction in which they think discussion will go, and to report back, as I say, without the actually nitty gritty of the negotiation being interfered with. You asked by whom; do you mean by whom more information should be made available?

Kelly Tolhurst: Yes, by whom and when.

Dame Margaret Beckett: It is up to Ministers to be straight and fair with colleagues in the House, and to try to make sure they know what they need to know. Of course it is always open to you, if there is a particular problem that you think colleagues ought to know about but it would not be helpful necessarily to air it absolutely in public at this moment in time, to have conversations with colleagues across the House on a Privy Council basis or whatever so that people are alerted to any difficulties that might arise. One would always hope for a position of a degree of mutual trust.

I remember, for example, when I was in the Foreign Office William Hague questioning me about the process of negotiations on the EU Constitution and being very sceptical. There had been a meeting of officials and he was asking me what had happened and I said, "Well, there is really nothing to report", and he said, "There must be". I got hold of him in the tearoom after and said, "William, you have been in Cabinet. You know just because a meeting has taken place does not mean that anything happened or that any progress was made." I did wish to say this in public because the German Government was in the presidency at the time and it would have caused considerable offence. In fact even what I did say caused offence. Mrs Merkel was not pleased, but it would have caused considerable offence to say, "Yes, they had this meeting of officials and they all trekked there from all over Europe and my officials tell me it was of no useful purpose whatsoever."

Nothing of any seriousness was discussed, and now I think I probably can afford to offend Chancellor Merkel. She is a brilliant negotiator, there is no doubt about that, but one of the reasons she is a brilliant negotiator is because she keeps her cards incredibly close to her chest. That meeting had been arranged by people who thought and hoped they would be able to share more information with other member states and then found that they could not because she was not sharing it with them.

Q112 Chair: Could I just come in on that and ask a question related to the public at large, because what you are describing is, within the framework of the EU, information that is made available to Parliamentarians, to Governments, to heads of state and all that sort of thing. What we are there for at the end of the day is to ensure that the public are satisfied and there is the most massive disconnection. I am told there is in the latest Eurobarometer poll on these matters a distrust factor of minus 60 in the European institutions amongst members of the public and only 43% turnout in the European elections. There is a serious disconnection between the citizen and the institutions. Would you be kind enough to reflect on what you said in relation to the information made available to them? It may be that some of them are



not that interested, but many of them are and there are many people who have a vested interest, or political or a real interest through think tanks or whatever, in the way in which these discussions are being conducted. Would you like to reflect on the question of the information for the public and the transparency that arises out of that?

Dame Margaret Beckett: I take your point completely. My own view is that the vast majority of members of the public would not be the slightest bit interested in any dot or comma of most of this. Of course there is a general interest, quite naturally, in what results from these things. In terms of the kind of conversations that we are talking about, you are right to identify that there are experts and academics and so on that would like to know more about the detail of what is being considered as things have gone on. Sometimes there is a limit to what you can do. If you have a lead negotiator who believes that the best way that they can get the maximum amount of progress is to keep things as close to themselves as possible, then there is a limit to what you can do about it.

I take your point entirely. Of course the public generally want to know, and of course the public are generally quite disillusioned with the institutions of the European Union. However, let us be blunt about it: we all know perfectly well that right across the world the public are disillusioned with everything to do with the world of politics and politicians. I doubt whether the European Union is exceptional in that regard.

Q113 Chair: I have one last point on that. Professor Simon Hix, who you may or may not have heard of, who is the person who set up VoteWatch and is a great expert on all of this, has given evidence to us over the last few weeks, and in 2013, on these matters—because we have been pursuing these matters for some time—and he is very concerned, with all the experience that he has, at the manner in which there is a lack of transparency and democratic accountability. His evidence will form part of this report, but I just thought that I would mention to you that of course you are right: there are people who are experts who do know and follow it very closely.

If people do not know and something goes wrong, for example, in relation to health and safety matters and then they do not know how the decision had been arrived at, somebody can die. You have got the thalidomide case or GM or anything of the kind and something really goes wrong, but nobody knew how that decision had been arrived at. In the UK Parliament I would suggest that as a result of the Committee procedures, the openness in Hansard, etc, you would be able to identify it and whether a Minister had taken on board what he should have done. I leave that as a thought with you, unless you would like to comment on that, because that is a matter that troubles Simon Hix a great deal.

Dame Margaret Beckett: I can understand that. If prior to the event you had offered people who might be very concerned about, as you say, a particular incident, scandal or something that had gone really badly wrong and so on, the opportunity—and the opportunity is often there; a lot of this stuff is public. It was Enoch Powell who said the best way to keep a secret is to announce it openly on the floor of the House of Commons, and a lot of the information is available, it is just that people are not interested in it at that time and then, when something happens and they think, “How did this happen?” it seems like a complicated process. One can strive to make things as good, clear and transparent as possible but there are the practicalities of how decisions have to be made in this Parliament and in the EU.

Q114 Calum Kerr: Good afternoon, Dame Margaret. By the way we are very used to meetings where not a lot happens in this Committee too, so we can sympathise with you. You have already partly answered this question, but on the basis of your experience of the UK parliamentary scrutiny of EU policy, what could we, as a national Parliament Chamber, do to



be effective in holding the Government to account in their negotiations in the Council? What more could we do?

Dame Margaret Beckett: My own view is that we have got quite reasonable structures. One of the areas in which I suspect maybe—and someone may correct me about this—we are quite fortunate is because the way that our Government works is that Ministers are Members of Parliament, we have the opportunity to hold our negotiators to account in a way that perhaps does not always happen in other fora. In that sense we have the potential for a good balance. I was going to say that it relies on both sides, but we ought perhaps not to be on opposite sides, but it relies on the members of Committees like your own engaged in scrutiny doing their job properly, and it relies on Ministers and other negotiators being prepared to co-operate, do their part and keep people as informed as they can, all things being considered. If people bring good will to all of these different angles, then the system can work well.

Q115 Chair: It is during the course of a Bill in Parliament that you put down amendments, you have got Committee stage, the Report stage, etc. You then have the House of Lords afterwards, and so it goes on. Basically, there is a huge difference between the procedures. On this question that Calum has just asked you about how we could improve our own Westminster performance in this respect, as you quite rightly say, there are a whole lot of things happening here that are not necessarily the same in all other member states or indeed for that matter in the EU institutions, including the Council of Ministers. If we are to be able to hold the Government to account, we need to be asking questions of Ministers and holding them to account, which is a posh way of saying asking difficult questions.

I mention the Maastricht Treaty as an example, or any Bill for that matter, but in relation to EU matters I think the contrast is quite great. There is a movement of consensus within rooms—you have said over lunch or whatever—where things are discussed and it is a massive problem to make it as accountable and as transparent as we would normally expect by way of assumption in our Parliament here. Do you have any reflection on that point?

Dame Margaret Beckett: I am not sure whether that is quite fair. The Foreign Affairs Committee, certainly in my experience anyway, was unique in holding its most difficult discussions behind closed doors; when I say “behind closed doors”, that means just Ministers and interpreters. Very rarely are you talking about decision-making. What you are talking about is an exchange of views about a whole mass of delicate diplomatic issues. Let me try to think of something I can share: there was a query being raised about rendition and people being ill-treated in other countries, and some member states—not us by the way—about whom this question had been raised. In the private session of Ministers only, the relevant Foreign Ministers were able to say quite bluntly, “We have looked into this extensively and it was not our problem. We were not the Governments so we do not care if it is shown that things happened, but we can find no evidence that they did.” They could not have had that conversation in public but they were very happy to share it and to be questioned by colleagues and so on, so that is the kind of thing.

You are not making a decision but you are getting a better picture of the flow and ebb of international affairs, and what different countries and their representatives think. That is not really the same. It is a very different matter when, say, an Agriculture Council or the Environment Council particularly was dealing with the climate change negotiations and so on. There you are working towards a process of reaching legislative agreement and treaty agreement.



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Q116 Chair: That is what I had in mind, because there is a difference between general policy-making and the specific legislative act, which then through section 2 becomes binding on the United Kingdom and then affects the daily lives of the people.

Dame Margaret Beckett: That would never just happen over lunch.

Chair: That concludes our list of questions. Again, Margaret, thank you very much indeed. It was very helpful. Thank you very much.