



Select Committee on the Constitution

Corrected oral evidence: Parliamentary scrutiny of committees

Wednesday 28 November 2018

10.25 am

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Members present: Baroness Taylor of Bolton (Chairman); Lord Beith; Baroness Corston; Baroness Drake; Lord Dunlop; Lord Hunt of Wirral; Lord Judge; Lord MacGregor of Pulham Market; Lord Morgan; Lord Norton of Louth; Lord Pannick; Lord Wallace of Tankerness.

Evidence Session No. 2

Heard in Public

Questions 10 - 20

Witnesses

I: Jude Kirton-Darling MEP; Dr Sylvia De Mars, Senior Lecturer in Law at the University of Newcastle.

Examination of witnesses

Jude Kirton-Darling MEP and Dr Sylvia De Mars.

- Q10 **The Chairman:** Good morning, and thank you very much for coming to give your perspective. Perhaps you would like to introduce yourselves briefly so that the Committee has a clear idea of where you are coming from.

Jude Kirton-Darling MEP: I am a Labour Member of the European Parliament, representing North East England, and I am one of the British MEPs on the International Trade Committee of the European Parliament. Before being elected in 2014, I was responsible for trade policy at the European Trade Union Confederation, which might also inform the debate about scrutiny.

Dr Sylvia De Mars: I am a senior lecturer in law at Newcastle University. I am an EU generalist, and I am here because a variety of colleagues have roped me in to being very concerned about parliamentary treaty scrutiny. As a European generalist, I can shed some light on what the European Parliament does.

- Q11 **The Chairman:** Perhaps you could start by giving us your general impression of the way in which the European Parliament functions in this respect, from the early stages of negotiations right through to ratification, and how effective it is and how constructive a role MEPs can play.

Jude Kirton-Darling MEP: I will start with the nitty-gritty of the practical reality. The European Parliament, particularly since the Lisbon treaty in 2010, has basically used the narrow powers that it has, which are a blunt instrument of acceptance or rejection of treaties, to open up investigations and in many cases create informal powers as a result of that. Legally, the treaty gives us the right to accept or reject, through European ratification of treaties. I will speak mainly about trade agreements, if that is okay, because that is my bread and butter.

On trade agreements, there is also the legal responsibility of the Commission to keep the European Parliament informed in a timely and effective manner. We have used that provision to create a whole system of formal and informal ways of exchanging information, from the point when we get the draft mandate for negotiation, through the negotiation process, through the period in which an agreement—this is particularly at the European level; it would not necessarily transfer to the UK level—is translated and legally scrubbed, and then out towards the ratification. Even then, ratification is not the last step, but it is the big formal step. We then follow agreements closely after they have been ratified and we hold the negotiators to the commitments they made in agreements. We have calculated that we are currently following something like 20 trade negotiations. We are also following up on the trade deals which have been ratified, particularly in the past five or 10 years, to ensure that what was committed to in parliamentary debates with the Commission has actually been followed up in practice.

Legally, the European Parliament has very little power but practically it has used that little power to create a space to try to influence. How influential MEPs are depends largely on the MEPs, as you will appreciate, and how engaged they are in the question. But the MEPs on the International Trade Committee have a disproportionate impact on EU trade policy through daily contact with trade negotiators and policymakers in the European Commission and the member states.

The Chairman: Is it possible to get an example of how that influence has worked?

Jude Kirton-Darling MEP: Sorry, I had to run through security, so I need to catch my breath here. Yes, a practical example of where the European Parliament has directly impacted on a negotiation would be the discussion around the investment protection chapters of trade agreements, which are very contentious. In 2010, the European Commission was given the power to negotiate investment policy for the first time. The first negotiations which covered investment policy were the Canada negotiations, the Singapore negotiations—there has been a bit of a messy story on Singapore—and the notorious Transatlantic Trade and Investment Partnership negotiations. Through parliamentary engagement, primarily on the US negotiations but also on the Canada negotiations, in that period I was talking about where in principle the negotiators have done their job and agreement has been finalised. CETA—the Comprehensive Economic and Trade Agreement between Canada and the EU—was finalised technically in summer 2014 but the whole debate about investment exploded at the same time. The CETA text had a traditional investor-state dispute settlement clause, which was very controversial, giving specific powers to multinationals. There was public outrage in relation to that clause and about the TTIP negotiations. What we managed as MEPs was to reopen the Canadian negotiations during the legal scrubbing. The text was reopened and the investment chapter was radically changed—completely renegotiated—and that was all as a result of pressure from the European Parliament being inside the negotiations and a lot of public mobilisation and concern from civil society and different actors outside the negotiations. It was the combination of both.

Dr Sylvia De Mars: As a legal academic, watching all this from Newcastle rather than Brussels, my primary impression has been that the European Parliament has indeed made a lot of what looked like very little. Historically, it had no influence of any kind on international relations. It had no power to veto or to do anything to consent to or disapprove of international relations that the EU was negotiating. But as of the Lisbon treaty, it has the power of consent. That sounds very friendly, but what it actually means is that everyone goes into the negotiations knowing full well that they have to keep the European Parliament informed and on board or the European Parliament may well veto all the work that has been done. My outsider perspective suggests that the Commission realised this a little bit more quickly than the Council of Ministers did. All three bodies are involved in different ways in European trade

negotiations, but the Commission has been fairly straightforward in saying, "Okay, let's be open to the European Parliament. Let's tell it what is going on and give it opportunities to input back. That way we know we are not committing a lot of resource to something that is doomed to fail at the end of the day". My distant perception is similar to what Jude has said about the day-to-day practice of a lot of communication back and forth.

Historically, the Council has been more obstructive in the sense that it takes—unsurprisingly—a much more state-centric approach to negotiations, particularly trade negotiations, where there are a lot of confidentiality concerns. So even with the Lisbon treaty powers, which include the power for the European Parliament to be fully informed at all times of anything that the Commission sends to the Council, the European Council refused to give up documentation that was considered to be confidential. This has been fascinating to watch. It has been almost like a tennis match, with the European Parliament repeatedly trying to sue the European Council, saying, "We have a right to full documentation. You are not specifying why we cannot have access to this confidential information. Can we please have it?" Individual MEPs have launched cases. There have been complaints about specific trade agreements. The one against Mauritius was the most successful one. In response to this, over a period of about five years, the Council has slowly, very grudgingly, said, "Okay, fine, you may have access to our confidential information as well", but it is still more limited. If I am correct, I believe it is the members of the INTA committee, the trade committee in the Parliament, that get to see confidential Council documentation setting out negotiation strategies and so on, but they cannot take notes on these materials when they see them, and they have to see them in a closed room. So it is a work in progress in terms of transparency.

The main point that is worth stressing here is that the European Parliament came into this just being told, "You are allowed information and you are allowed a veto at the end", and it said, "To make both of these worth while, we need more than what you are giving us", and we have seen the other institutions more or less come to terms with that and start to work better as a unit. So these negotiations are very different from the traditional, state-oriented, very much executive-led treaty negotiations. We are seeing something move in a quite different direction in Europe.

Q12 Baroness Corston: In your introduction, Ms Kirton-Darling, you said "when the committee accepts a treaty". Is there a formal procedure if you decide to reject one?

Jude Kirton-Darling MEP: Yes, there is. I guess part of how we, and MEPs before me, were able to open up the space is that there are examples of the European Parliament rejecting trade deals. The most well known is ACTA, the anti-counterfeiting deal. What happens in practical terms is that, when the negotiators have finished their work, the agreement goes from the European Commission to both the Council and to the European Parliament. In practice, it is an informal agreement

rather than a treaty specification. The agreement is that the Parliament takes a position before the Council takes its position. But that is an informal inter-institutional agreement. Once the agreement comes on to our table, we then start the legal process of scrutinising it in a much more formal way.

I will give you a very practical example. The Japan-EU trade deal was finalised during the summer. It came to the European Parliament just a few weeks ago. In each trade deal we have a specified MEP who is the rapporteur for that trade deal. In each of the political groups, we have shadow rapporteurs for the trade deal. They will have been monitoring this and leading on it for their political group throughout the whole process. Once it comes into Parliament, the rapporteur often drafts two reports—sometimes only one. One report is extremely short; the consent report to say that the Parliament accepts or rejects the deal. The second report is a non-binding set of recommendations: an accompanying analysis from the Parliament explaining its voting position. The Parliament does not always adopt that second report; sometimes there is only the consent report. But with big trade deals there is always a second report in practice.

Those reports go into the committee, and MEPs can amend both reports. We in the trade committee just voted on the Japan deal and there were amendments to the consent report to say that we reject the deal. It is very easy to put forward the rejection of a trade deal, in that sense, with amendments in the second report as to the reasoning and so on. That then goes from the trade committee to the plenary. We expect to vote on Japan in the second week of December in Strasbourg. In the plenary session, amendments can be tabled to change the report from the trade committee. Another amendment for the rejection of the Japan deal will be on the table in December. Other proposals may be put forward in plenary on different deals.

That is the formal process in the European Parliament. The committee votes first, then its recommendation is put to plenary and plenary votes by a simple majority.

Q13 Lord Hunt of Wirral: Ms Kirton-Darling's outline of practical cases is really helpful. When the most ambitious EU trade deal to date, the Canada trade deal, was coming through the European Parliament, were there already signs that the Socialist Group were concerned about the labour and environmental standards? That then of course resulted in the Wallonia district of Belgium opposing it. Was that rehearsed inside the European Parliament by the representatives of Belgium and Wallonia who sit in the European Parliament?

Jude Kirton-Darling MEP: Yes. Absolutely. In fact, the Canada agreement is a good and a bad example of what happens. As I described when I was talking initially about the investment chapter, the Canada agreement in a way became hijacked by the debate on the Transatlantic Trade and Investment Partnership. While the first finalised text was in the middle of 2014, we then went into the scrubbing period. The actual final

text that was put in front of the European Parliament for ratification was not finalised until 2016. In the Parliament, the debate was very alive around the Canada text from 2014.

Think about the cultural shift that has accompanied that. Sylvia talked about the other institutions slowly realising that the European Parliament had a position and so adapted their behaviour. The Canada agreement is quite a useful example of that as well, because it was negotiated in virtual radio silence. It was negotiated according to the old, traditional view that civil society and the European Parliament did not really have a stake in international trade questions. This was the prerogative of the member states and the Trade Policy Committee of the Council. MEPs could say what they liked but they had no impact. ACTA was rejected shortly before the CETA agreement was finalised in 2014, and the act of rejection completely revolutionised how the other institutions saw the European Parliament. The Canada deal negotiation and ratification is a good example of how suddenly the Commission realised that it had to start engaging, not just with the European Parliament but with civil society.

I know there are questions about devolved Administrations and what will happen in the UK post Brexit. The Wallonia parliament, interestingly, took its role in the Belgium federal system very seriously when it came to trade agreements. For example, it takes evidence from MEPs. I have never been invited to the Welsh Assembly to talk about a trade negotiation, but I have been invited to the Wallonia parliament to talk to its international trade committee about negotiations for which I am the shadow rapporteur for the Socialist Group. That is perhaps a good contrast. It also had the European Commissioner and the negotiators give evidence before its committee. All the institutions knew that these issues were alive in Wallonia, and Wallonia had a veto over the Belgian federal position in the Council.

The difficulty is that it is, to an extent, like a game of poker or chicken—depending on where you come from in the country and what games you played as a kid. The top and bottom of it was that there was an assumption that Wallonia, a small region in Belgium, would not stand up to the European Council; that it would not hold its ground and it would fold, and the deal would go through. The Walloons reacted very negatively to that assumption. We had an extraordinary period where the Trade Minister of Canada was travelling to Namur in Wallonia, and was in tears outside the parliament of Wallonia trying to negotiate extra protocols to get its support. That was because all its concerns were completely transparent, communicated and well known, but they were not taken seriously. That is the danger. If you engage people and give them powers but then do not take them seriously, the danger is that they will not play by your rules.

- Q14 Lord Norton of Louth:** I want to follow on from what you are saying. You have drawn out very clearly the dynamic that is involved and the changing relationship between the Parliament, the Commission and now

the Council. What is the balance, where you are now, between the three? You have made clear that the power of veto is leverage. Do you use that power very often, or is it merely a threat hanging over them so that they engage constructively?

Jude Kirton-Darling MEP: That is the blunt weapon of the European Parliament. It is an effective weapon only if it is perceived that a majority would go with it. Majorities in the European Parliament are historically very pro trade, I would say.

It is always a game of how much you can use the leverage, which in different negotiations is bigger or smaller. It might be a negotiation to which the general public are not paying much attention or are not really interested in. To give a concrete example, in the same committee meeting in which we voted on Japan—it was possibly the one after—we voted on an economic partnership agreement with Samoa. There has been no public discussion about EU-Samoa trade relations. There was no real leverage in terms of the European Parliament influencing the outcome, and the majorities flow from that. We are politicians—that is clear. If there is pressure and noise from outside the Parliament, it increases the leverage that the European Parliament has in influencing negotiations. Where there is little public interest, the capacity to use the tools that we have reduces commensurately.

Lord Norton of Louth: Do you feel that there is scope for the Parliament to go much beyond where it is now or is it reaching a stage where its role is effective—so that it is not just a blunt threat but a productive player in the process of negotiation? Do you see it changing much in terms of the power relationships?

Jude Kirton-Darling MEP: The key change, as Sylvia mentioned, is around the publication of documents. It is not just the European Parliament pushing for more transparency from the Council; we also have an ally in the EU ombudsman. I am also a shadow rapporteur in the Petitions Committee of the European Parliament, which is working on recommendations to the Council from the EU ombudsman for greater transparency. The Council's knee-jerk reaction is always to stick a "limité" stamp on any document, even if it is an announcement about when tea time is. The European Parliament, together with the ombudsman and organised civil society, has pushed back. There is potential for a lot more movement. If there was more movement, the balance between the Trade Policy Committee and the International Trade Committee of the European Parliament would shift.

I should make it clear that as members of the International Trade Committee we are sent confidential documents circulated among members of the Trade Policy Committee—with the exception of the most sensitive. If you are a rapporteur or shadow rapporteur on a file, you get an extra level of access to the negotiations that you are covering. The reading rooms have been used only really in the case of TTIP. That was quite a step forward. The call for more transparency came from the International Trade Committee, but it reflected the desire of MEPs across

the Parliament. Their inboxes were filling up with emails from campaigns on TTIP and they wanted to be able to see what was in the text. The reading rooms came about because of the request from all MEPs, but I have seen their systematic use only in the case of TTIP.

Lastly—I realise I am talking too much—on TTIP, we all enjoyed much greater transparency because we had the readouts from the negotiating teams after the negotiating rounds, which are probably the most useful thing I have ever had access to. The negotiators wrote their reports back to their headquarters in Brussels, saying, “This is where we have got to in this round. This is where the US is. This is the key issue”. You could see exactly what was going on in the negotiations.

The Chairman: Do you want to add anything, Dr De Mars?

Dr Sylvia De Mars: Yes. I am in two minds. The transparency debate is in a way the easiest one to push harder on, simply because the EU has been accused of being democratically deficient since the dawn of time. One nudge is always that the Council is too secretive. Now that the European Parliament has publicly joined this battle, saying, “Give us more so that we can represent you better”, it is almost an easy win to give it more access to documents, especially in such areas. Brexit has engendered a particular interest in and scrutiny of international negotiations all over again. I see that moving forward, much as Jude does.

What would shift the power balance further towards a level playing field is a change in who sets out negotiating directives. For now, they are still very much the territory of the General Affairs Council. It is the one area where the treaty does not explicitly give a role for Parliament, but the argument has been made, I think rather persuasively, that it is very difficult for Parliament to scrutinise negotiations if it cannot help at all in developing a trade policy. That is entering the more worldwide debate about what we are we doing with international law. Is it still appropriate to treat it almost as a prerogative power—a purely Executive-dominated area of work—or given how many areas of domestic practice are affected by international relations, should Parliament be involved from the get-go and start helping to develop a mandate?

I mean this in a complimentary way, but because the EU is almost a baby when it comes to such issues, it is more likely quickly to develop in that direction than are a lot of independent countries, where it is almost unthought of to give such a role to parliament. That would be the next big step. I would not be surprised if negotiations such as those on the future relationship pushed hard in that direction.

- Q15 **Lord Dunlop:** Perhaps I may probe in a little more detail the way in which the committees work in scrutinising international law. Obviously, on the trade side, there is the International Trade Committee, which has built up its own expertise. What other expert support do you have to make your scrutiny effective? How do you work with the other specialist committees of the European Parliament which are not within this

confidential quorum? Secondly, could you say a little bit about how the European Parliament scrutinises non-trade international agreements?

Jude Kirton-Darling MEP: First, I completely agree on the question of mandates. How do we work with other committees? Inevitably, because modern trade agreements are not just about tariffs, you get into non-tariff barriers and regulatory co-operation and start to touch on the competences of lots of other committees. We have in the European Parliament quite a dynamic relationship between committees. I think that it would be fair to say that there are some fairly robust discussions in the Conference of Committee Chairs, which is the structure inside the European Parliament that brings together the committee chairs of all the various committees to discuss who is responsible for what and decide the division of labour. One committee may want to give its opinion to another committee.

On trade agreements, it is not unusual for the European Parliament to receive those opinions. I think that 12 committees of the European Parliament adopted an opinion on the TTIP negotiations specific to their area of concern, whether it was on the environment, employment or some other aspect. In general, the committee that we on the International Trade Committee tend to work closest with is the Foreign Affairs Committee. Quite often, trade agreements are part of a pillar of an association agreement. The association agreement is the prerogative of the Foreign Affairs Committee and the trade agreement that of the International Trade Committee, so there is quite a close relationship between the two. With Canada, we have not only CETA but the far-less-talked-about strategic partnership agreement, or SPA, which encompasses the security partnership, research and other non-trade issues. The process is the same.

The other committee that is worth highlighting is the Constitutional Affairs Committee, which is the lead when it comes to Brexit. For instance, it is the Constitutional Affairs Committee which is dealing with the UK withdrawal agreement in the European Parliament. So there is quite a structured relationship at the moment, but there are inevitable turf wars. You will recognise that, I am sure, from the Lords as well. There are some issues that you think will fall into one committee's domain, but then another committee stakes its claim. More often than not, the conflict in that sense is with the agriculture committee. When we get down to the nuts and bolts of the tariff negotiations at EU level, all too often it is agricultural or agri-food tariffs that are concerned. If you think of negotiations such as with Mercosur, or with South Korea on pork, these are big European industries.

You asked how we inform ourselves and what resources we have around us. The European Union is still very silo based. The European Commission is still very silo based, with experts in a field clustering around the directorate-general responsible for a specific policy area. The European Parliament has a similar culture, to an extent, so it would be very rare for me to have a meeting with the European farmers' union but my colleague from the north-east, Paul Brannen, who sits on the agriculture committee

of the European Parliament, has weekly meetings with the farmers' union. We have an inevitable siloing of interests from outside. Obviously, there is expertise which comes from organised interests from outside.

Internally, we have some resources. Similar to Parliament, we have the European Parliament library and the European Parliament legal service. That is another angle to how we use the powers that we have beyond that blunt power to try to influence. Sometimes we refer questions to the legal service to try to eke out a bit more influence over the Commission's direction. Occasionally, we refer questions to the European Court of Justice, because the European Parliament can do that on constitutional matters. We have internal resources around us: our own committee secretariat; our political group secretariat, which supports our work; and our parliamentary offices, which also should get credit for a lot of the work that is done.

- Q16 Lord Beith:** Ms Kirton-Darling, you describe a very different system from the almost non-system within the UK Parliament for dealing with treaties. Does that mean that you, as a UK Member of the European Parliament, either on your own initiative or because you are pressed to do so, engage with politicians and parliamentarians here who might want to make use of some of the knowledge you have? I am not talking about information that you are required to keep confidential but your knowledge and engagement. Do you and your colleagues, and those in other member countries, feed back into the national process?

Jude Kirton-Darling MEP: To an extent. It would be fair to say that for MEPs—we are the white rhinos of British politics, since we still walk the earth but we are, in effect, extinct—the one thing that unites us is our frustration that the work that we do in the European Parliament is not necessarily unknown by these two Houses in Westminster but there has been very little interest. It has been interesting to compare the number of times I was asked to come and talk about what we do in the European Parliament in the trade committee pre and post the referendum. The numbers are very different. I have given evidence to a number of Lords committees. I have given evidence to the Trade Bill Committee about parliamentary scrutiny. The interest is now live here, which we are trying to take advantage of, to pass over the knowledge that we have while we can. Before that, the feedback was pretty informal.

Lord Beith: By “informal” do you mean “not very much”?

Jude Kirton-Darling MEP: Not very much and primarily party-political, so feeding back to our colleagues working in the policy teams in the different parties but not necessarily into the body politic of Parliament.

Lord Beith: On another point, what significance does the scrutiny reserve for member states have in the process of parliamentary scrutiny that you have described?

Jude Kirton-Darling MEP: In terms of the parliamentary scrutiny in Westminster for UK Government ratification?

Lord Beith: Is it significant as a concept in the process of the European Parliament's examination of treaties?

Jude Kirton-Darling MEP: Honestly, not really. There is a growing recognition—and it is another of the inevitable tensions because of the growing role of the European Parliament—that there needs to be far more structured and engaged dialogue with national parliaments. The situation with the Canada deal meant that there was a realisation that national parliaments were interested and engaged and potentially could be difficult thorns in the side of EU trade negotiators, and the debate about how national parliaments are engaged has become a much more live one. We have done more internally to try to link up more with national parliaments. From the perspective of British MEPs, the only formal engagement that we have are the tripartite meetings, which happen biannually or sometimes three times a year, between the European Scrutiny Committee in the Commons, the Lords European Union Committee, and Members of the European Parliament. The agendas for those meetings cover a raft of issues. Sometimes you have a bloc on trade policy or a specific agreement which is of concern, but you do not have detailed engagement. That is just a personal view on how I have seen it as an MEP.

The Chairman: We are in danger of running out of time if we do not contain our questions a little.

Q17 **Lord Morgan:** I turn to devolution, because of course that has been an argument lately in the Brexit negotiations. What role do the devolved Assemblies and Parliaments in this country have in the conclusion or conduct of international negotiations and treaties in the EU? Hearing your interesting comments about Wallonia, I just wonder whether that and Catalonia, for example, give us any kind of guidance as to what does happen and what should happen?

Dr Sylvia De Mars: The example that comes to my mind is a long-standing one: Germany. The German federal parliaments have input into German trade policy but only via the central parliament. They handle their federalism in a way that is highly compatible with how the EU has ordinarily dealt with member states' own affairs. In effect, the central parliament has said, "We will take care of this. We will negotiate with our federal parliaments as the central parliament. We will take their opinions on board and reflect them in the German overall position". That is probably an easier comparator for how the UK might wish to engage in trade negotiations in future in the light of devolved government than, say, Wallonia. That would be a rather big change from the amount of power which the devolved regions have had to date.

Jude Kirton-Darling MEP: I sit on the International Trade Committee with David Martin MEP from Scotland. I would not like to second-guess how much contact he has, but from a practical perspective we have had very little formal contact with the devolved Administrations, in terms of direct contact with MEPs sitting on the committee. But it may be that

they go more to their regional MEPs—we have Welsh and Scottish MEPs—and focus more in that sense.

Lord Morgan: Welsh and Scottish legislators have been quite angry recently, feeling that they are being frozen out and the devolved settlement in this country has not been carried through. Is that justified?

Jude Kirton-Darling MEP: If I was a Member of the Scottish Parliament in the current context of Brexit, I probably would have joined the group of parliamentarians who took their case to the European Court yesterday. It is clear that their views on Brexit have not been fully taken into account. With regard to how they engage with broader questions of international treaties, I simply do not have enough information about how they are taken into account by central government.

Q18 **Lord Wallace of Tankerness:** We have been given some information about the European Council's Trade Policy Committee. Might that provide some kind of model for how, post Brexit, we could make arrangements within the United Kingdom, given that the negotiation of international treaties is a UK Government responsibility, but clearly it raises issues that affect the devolved competence of Scotland, Wales and—I hope, again—Northern Ireland? Do you have any observations on that?

Jude Kirton-Darling MEP: My view is that we would need to create a forum that brought together parliamentarians in some way. The Trade Policy Committee of the Council is potentially a model for how you could do that. In essence, it provides the negotiating mandate and steer for whoever is negotiating on behalf of the Union. To ensure that you have all parts of the UK on board, and then you could feed back and get the support of Parliament, you would want to have Parliament in that room, and you would want to have the devolved Administrations there so that there was proper scrutiny of what was being discussed, particularly because in most cases we are not talking about what are perceived as traditional trade cases. We are talking in many cases about regulation and non-tariff barriers. Increasingly with devolution, the devolved parliaments have responsibility for those areas of policy-making. Ensuring that they are part of the steering of a trade policy is really fundamental for democratic scrutiny and transparency, I would have thought.

Dr Sylvia De Mars: I agree. It is difficult to say that it would work as an exact model because, obviously, the relationship between the member states compared with that of the devolved Governments is not quite comparable, level to level. It is crucial that we recognise that there has been too little interest in the knock-on effects of international agreements signed on behalf of the UK to date. Part of taking back control, if you will, is taking responsibility for the knock-on effects which that can have. In any sort of system where there is devolved legislation, you need to make sure that whatever agreements you strike at the centre do not have knock-on consequences on those devolved regions that were unforeseen or will cause significant problems in those regions. I completely agree: some sort of forum needs to be established that can develop the

negotiating mandate for whoever negotiates on behalf of the UK which takes into account not only the central perspective but the outlying ones.

- Q19 **Lord Judge:** You gave us very helpful information about the structures within the EU itself. You have helpfully told us about civil society and the Wallonian society and so on, so there is input from the bottom. Can we start from the bottom? When does the input of stakeholders, as they are called, really start? Is it after the negotiations are well under way or before? What would be best? Please give us your insight.

Jude Kirton-Darling MEP: This is one of the areas where the EU has taken steps forward—has jumped forward, actually—in the past few years, but there is still a lot that could be improved. Formally, the trade part of the Commission has a series of tools that are basically concentric circles. The widest tool is open forums, called civil society forums, where anybody can register an interest to attend and talk, in many cases, if not to the lead negotiator, to the deputy lead negotiator for a particular negotiation.

Lord Judge: These are in Brussels or Strasbourg, are they?

Jude Kirton-Darling MEP: Yes. Exactly. These are meetings that take place in the Commission's buildings. In many cases, people travel to those meetings. I would have to check this, but if memory serves, from my time in the trade union movement, the European Commission was willing in the past to support travel expenses if people wanted to come to a meeting to hear about a particular trade negotiation. The meetings have a broad, open format, but you still have to know that one is happening. It is still not completely open to the man on the street, if you like. Those meetings tend to bring together associations—European-level associations, national associations which are engaged, and business; they are not exclusively non-governmental. They include the industry associations and business organisations, consumers, and so on. So they are very broad.

The novelty during the TTIP negotiations, because of all the public mobilisation around TTIP, was to have alongside the negotiation round open-door feedback from the negotiating team in the place where the negotiations were taking place, so in either Brussels, Washington or New York, depending on where the negotiation round was. Those are the open forums—if you like, the largest concentric circle.

You then have advisory committees around the Commission. In the past, those committees were very opaque: it was difficult to see who was on them, who was influencing, how often they met and what influence they had. Several transparency organisations have spent years campaigning to open up those advisory committees. At the time of TTIP, again, the Commission took inspiration from the US system of having a structured advisory committee on the negotiations. It brought together a selection, considered to be a representative share, of businesses, trade unions, consumer organisations, public health organisations and environmental organisations, which had access to the negotiating text. In the same way

that I as an MEP sign a confidentiality agreement, those organisations signed confidentiality agreements and had access to the text. The aim was to bring people on board and to be as transparent as possible within closed negotiations.

After the negotiations, once the agreement is in place, you then have structured engagement with civil society. With most of the EU's trade agreements, there is a civil society forum, particularly as part of the trade and sustainable development chapter, looking at labour and environmental questions. That brings together civil society organisations from the two partner countries or regions to discuss the implementation of the agreement.

Then you have another inner circle—there are always concentric circles—which is the domestic advisory group. That group often has around six to 12 members and it brings together business, unions and environmental and non-governmental organisations to monitor and follow the implementation of the trade agreement from a trade and sustainable development perspective. Those people meet regularly and separately—the EU side together, the third-country side together—and then, in principle, they meet jointly as well to make recommendations. They formally make recommendations to the trade committee established by the trade agreement, which includes the government representatives.

Then there are all the informal contacts, which are enormous in number and difficult to quantify. On an average day, we receive NGOs, human rights organisations, trade unions and environmental organisations from all over the world. There are all sorts of informal contacts as well, but that is the formal structure.

Lord Morgan: Have things improved in this area? I ask because my daughter worked some time ago with the Commission and her role was concerned with assistance for South Africa, which was just emerging from the apartheid period. I recall asking her what impact the European Parliament had on the work she was doing and she said, "Virtually none". That appeared to be the case then, but things have come on a lot, do you think?

Jude Kirton-Darling MEP: Things have moved on dramatically since the early 1990s. There have been big steps forward in terms of transparency around the Commission—who sits on expert committees and who is feeding in where. My gut feeling is that the job is not yet done and there still needs to be a lot more transparency about who is actually influencing the Commission in different policy areas.

The International Trade Committee took evidence on parliamentary scrutiny from civil society actors on 31 October. It was interesting to hear from the consumer organisations about the newly created, very controversial area of digital rights and digital services and trade, which is the cutting edge in lots of the trade negotiations, with very difficult issues around data protection, privacy and so on. There the Commission has

established a much more formal structure, bringing in industry and non-governmental organisations to try to formalise it.

In my view, it is all about taking things out of dark rooms and trying to have discussions in a more lit environment. The difficulty always in negotiations is that you want some things to remain unseen by your negotiating partner. How do you ensure maximum transparency without losing your room for manoeuvre in negotiations? That is always the delicate balance. But there have been big advances since the early 1990s.

Lord Morgan: That is good to hear, thank you.

Q20 **Lord Hunt of Wirral:** Just a quick question, because we are running out of time. Dr De Mars, having heard what has been a very valuable outline of the scrutiny of international agreements by the European Parliament, what are the main lessons the UK Parliament should learn from all this?

Dr Sylvia De Mars: It is such a big question, is it not? In some ways a direct comparison is unhelpful, largely because we are talking about institutions with different responsibilities. I forget who it was but someone gave evidence last week to this Committee and they indicated that the reason that the European Parliament operates so differently is because it is not responsible to a Government in the same way that domestic parliaments are. That said, what makes it successful at what it does, to a greater degree than I think we see any scrutiny happening here domestically, is the fact that it is very organised in how it approaches it.

I did not realise this actually happened, but the most important thing is the matter of triage. When negotiations start being contemplated, it must be considered what policy areas they will cover and thus what committees are involved in the scrutiny. Granted, the European Parliament does not do that perfectly, but it has a committee in place to start that process of triage, of saying, "Is this is a big one? Is this is a small one? Do we need multiple committees to look at this? Who needs to scrutinise?" That is essential and the only way that dealing with the UK's international relations is going to be manageable by Parliament unless it massively expands in size.

Beyond that, it is important that the constitution adjusts to regaining this international relations power by making new settlements on what role Parliament has to play in this. The so-called "meaningful vote" is an indication of where this might go, but it is very possible that that will be written off as a one-off exception to the role Parliament may play in international negotiations in the future. It is important to get a clearer understanding. If you want to follow the European Parliament model of saying, "We have a formal decision that can veto all of this", there is a lot of scope for detailed scrutiny that influences the negotiations. Without such a power, I am afraid that the historical balance of Executive-led negotiating and conclusion will continue.

I gave evidence to a different committee recently, which wanted to talk to me about how meaningful the meaningful vote was to the EU. I said that we were past the point where the European Union is all that concerned with our internal parliamentary structures. Whether or not we need to approve the agreement domestically for it to be ratified is not of concern to it. What is of concern to it is who it is negotiating with and what that is influenced by. In some ways, this might be an opportunity to revisit some of our traditions and how we deal with other countries, and consider whether there might be a better way forward in the 21st century.

The Chairman: That was very helpful, both of you. We have had some very useful information this morning. Thank you very much indeed for coming.