

MEP Briefing Notes on EU

The EU's Democratic Deficit Briefing Paper

It is clear the Euro crisis has exacerbated the severe lack of democracy in the European Union. The reality is that at heart the 'Europe issue' is actually the 'Democracy issue'. It is the severe lack of democratic accountability and oversight in EU institutions together with the undermining of our own treasured democratic institutions, such as the 'Mother of Parliaments' in Westminster in the pursuit of 'ever closer (political) union'.

Nor is it just a British issue. The EU's own Barometer of public opinion shows a crisis in support for EU institutions: In April 2013 the Head of the European Council on Foreign Affairs Jose Ignacio Torreblanca said that "the damage is so deep that that it does not matter if you come from a creditor or debtor country.....citizens now think their national democracy is being subverted." This was after a Eurobarometer poll which showed that distrust of the EU now runs at 53% in Italy, 56% in France, 59% in Germany, 69% in Britain and 72% in Spain. European Commission President Barosso complained of a lack of understanding of the policies of austerity and feared populism and nationalism was threatening his 'European dream'.

Writing on this, leading UK commentator Simon Jenkins observed that such fanciful dreams surrounding the EU "make dangerous politics" and cloak the "meddling regulations and unaudited fraud of the ever burgeoning EU". He issued a stark warning that "democratic deficits cannot last long before lapsing into dictatorship or mob rule. The history of Europe proves that people will not tolerate conquest either by bullet or bureaucrat".

It was the overwhelming desire to save the Euro collapsing and thereby damaging the EU 'project' has exposed the pretence of democracy at the heart of the EU.

In 2011 the Huffington Post reported that EU leaders (Angela Merkel and Nicolas Sarkozy) had forced the Greek Prime Minister George Papandreou to drop his November promise of a Referendum over the EU's bailout plan that required deep spending cuts. Prime Minister Papandreou was swiftly replaced thereafter in November 2011 by Lucas Papademos whom they term an 'unelected technocrat' and in Italy, Silvio Berlusconi was replaced by another unelected technocratic leader – Mario Monti.¹

Fittingly, both men lost subsequent elections. In February 2010, the Telegraph reported that Greece was even stripped of its vote at an EU meeting which the Post described as marking a 'constitutional watershed and represents a crushing loss of sovereignty'. More important, even though the act was more symbolic than practical, it showed that the EU was prepared to suspend the rights of a democratically elected member state Government as a

punishment for not complying with the EU's austerity demands.² The EU has openly proposed removing the ability of states to vote in future Councils on a regular basis. This would mean that a supranational body – led by unelected bureaucrats – effectively disenfranchised the voters of a nation state from key economic and monetary policy decisions that would affect their nation. As stated later in this and other briefing documents, the Fiscal Compact will ensure that the Commission and the ECJ will be able to impose budgets on democratically elected Governments from 2014 onwards. Failure to comply will result in the imposition of very heavy fines. Indeed, the EU Commission in November 2013, warned Spain and Italy that their draft budgets for 2014 failed the new debt and deficit rules. Other nations such as France and the Netherlands only just passed muster. Nations such as Greece weren't reviewed at all.

The EU Commission's alienation from democracy was starkly demonstrated earlier this year. In April 2013, it was reported in the British media that EU officials were stunned when Cyprus ordered that the punitive European Commission/ European Central Bank/IMF Troika Bailout Plan should be put to a vote of the nation's Parliament. The measure was passed by only two votes³. It is not surprising that the Cypriot Government felt obliged to put the plan to the vote for it means that Cyprus will have to find 13 billion Euros in budget cuts and force the nation's depositors to foot the bill for recapitalising the country's banking sectors. The Orthodox Church of Cyprus alone will lose some 100m Euros with a disastrous impact on its associated charities. Even the normally compliant Socialist group in the European Parliament condemned the EU's handling of the Cyprus crisis as 'neo-colonial'⁴. This wasn't the only example of the EU's contempt for member state democracy.

Leigh Philips reported in May 2012 former European Central Bank chief Jean-Claude Trichet as stating that if a country's leaders or parliament "cannot implement sound budgetary policies", that country will be "taken into receivership" or as Trichet terms it 'federation by exception'. Trichet continued: "It is a quantum leap of governance which I trust is necessary for the next step of European integration"⁵. Trichet also believes that such a step would have democratic accountability if it was approved by the European Parliament and the Council of Ministers.⁶ Leigh Philips of Red Pepper magazine sums it up thus: "Trichet is in essence saying here that when people elect the wrong parties, they have forfeited their right to democracy." This is a prime example of the EU's rule through technocrats and lawyers, not through democrats.

This type of attitude marks the extent to which the EU Commission is alienated from democracy and indeed reality. In the same month as the Cyprus crisis (April 2013), the European Central Bank (ECB), EU Commission and Eurogroup issued a statement stating that the "evidence is clear" that the EMU crisis policies have been successful and recovery is on the horizon. The statement went on to the grandiose claim that "The Eurozone has shown a degree of resilience and problem-solving capacity that many observers and policy makers would not have predicted even a year ago." In reaction to this, Steen Jacobsen from Saxo Bank concluded: "Nothing they (the EU) say is

true. Reality has never been further away. It's scary. We think the Eurozone is in far worse shape than they realize.”⁷ The International Monetary Fund (IMF) agreed, saying that the Eurozone remains “the epicentre of potential risk” in the world, and its Global Financial Stability Report found that the credit crunch in Southern Europe is actually worsening rather than improving. This hubris is typical of institutions that are arrogant and insulated from all democratic accountability. The forthcoming rush to fiscal, economic and thereby political union through the Fiscal Compact shows that democracy is even greater peril. Indeed, as President Barosso stated in early 2013, the aim is for full political union following greater economic integration and regardless of the views of the non-Eurozone powers such as Britain.⁸

Within the UK, The democratic deficit over the EU is even more considerable in light of the fact that the last time that the British people were consulted on the European Union issue was the 1975 Referendum. This means that no-one under the age of 56 has ever voted on Britain’s membership of the European Union.

The British people were all denied a vote on the Lisbon Treaty, by Labour and the Liberal Democrats voting down calls for a British Referendum. The result would have been a likely No. But those who did have Referendum, and voted No, were also steamrollered. The French and Dutch voted No to the EU Constitution in 2005, the French with a very high 70% turnout and 55% of the vote. But after a ‘period of reflection’ the EU merely changed its name to a Treaty on the Functioning of the EU, vehemently denied it was still a Constitution and watered down some measures such removing any mention of ‘anthems’

Requiring the assent of every member state, the Lisbon Treaty process was interrupted when the Irish voted No in their Lisbon Treaty Referendum of June 2008. Some six months later, in October 2009, the Irish under heavy pressure from the EU and other member states were compelled to vote again in order to get the right vote which was ‘Yes’.

The Power Structure of the EU

To understand the democratic deficit, it is necessary to analyse how the EU institutions work in practice and how they fail democratic ideals.

The EU legislative process is summed up Dr Lee Rotherham in his book ‘The EU in a Nutshell’ as follows: ‘The Commission proposes, the Council (of Ministers) barter and consents. MEPs try to amend.’⁹

In more detail, the book states that ‘The Commission drafts proposals, national civil servants negotiate change at Council level, European Parliament puts in its own amendments based on party politics, Council and Parliament deal with those changes, the resulting document gets printed in the Official Journal and member states legislatures are expected to transpose laws into national laws, Commission ensures that EU law is both enacted and enforced.’¹⁰

The EU system of lawmaking is so complicated that the UK Government department for Business, Enterprise and Regulatory Reform (BERR) devised a complex flow chart to convey how the system works in practice. The diagram was then included in a 2012 House of Commons report 'How the UK Government deals with UK Business' and really requires a whole page to itself. The official summary of just one phase of the EU co-decision process is fifty two pages long. The EU institutions are examined in more detail later in this document.

The EU Commission

The 'EU in a Nutshell', published in 2012, put the total number of Commission staff at 24,000 with a total wage bill of 1.9 billion Euros. In order to fulfil its function, the Commission works to a five year plan with some 230 distinct policy areas which are grouped under thirty main policy headings. This is in contrast to just fourteen Vice Presidents for the European Parliament which has its own secretariat. There are twenty standing committees. The UK Commentator Simon Jenkins likens the EU system to a 'parody of the Tower of Babel'.

The EU Commission is now the source of at least fifty per cent of British domestic legislation - as stated by the House of Commons Library research paper of October 2010 'How much legislation comes from Europe?'.¹¹ Although they are elected by constituencies of sometimes millions of people, MEPS have no right to propose legislation. Indeed, the sole right to propose legislation resides with the EU Commission who no one elects. They also have the power to enforce those laws with the aid of their judicial 'rubberstamp', the European Court of Justice (ECJ).

As for the bit in between proposing and enforcing, a 2012 House of Commons Library research report makes clear, UK departments must 'get involved early in discussions with Commission officials in order to learn how their policy is developing. Often the best opportunity to influence a Commission policy is when it is in the early stages of development. Then it is important to maintain good lines of communication with Commission officials.'

In other words, the implication that the rest of the so-called EU democratic legislative process is simply going through the motions is clear. The Commission has hundreds of 'comitology' committees where it sounds out experts, including non-EU experts such as from Norway, on its proposals

The UK Parliament is part of this 'going through the motions'. EU laws are generally not debated in the House of Commons as most are passed by the British legislative back door as 'statutory instruments'. Indeed, in the area of financial services there is an increasing tendency for the EU to use directly enacted Regulations, which cannot be altered by the UK Parliament, rather than Directives that do need some interpretation into UK law and thereby debate.

While both UK Houses of Parliament have committees dedicated to scrutinising the legislation of the European Union but by the time it reaches our Parliament, the law is a done deal and the Houses of Parliament cannot amend even a comma.

In a speech made on 23rd April 2013, Conservative MP Andrea Leadsom pointed out that the committees of Parliament do not have the power to summon European Commissioners or senior Commission staff or even UKREP officials. Theoretically, the Houses of Parliament can vote against a bill but the executive's control of the Parliament means that few Government measures are ever rejected. If a bill was rejected, the UK would be taken to the European Court of Justice by the Commission and the country will be compelled to introduce the law or face heavy fines.

In effect, this means that a great proportion of British laws were first drafted in Brussels with minimal democratic oversight, rubber stamped by a mainly federalist European Parliament, passed in secret by the Council, and are then transposed into British law with a similarly minimal democratic debate.

This complete lack of genuine democratic oversight is often masked by Westminster and its attendant village media, pretending UK laws originate in the UK when they are mere agents of EU decision making. One example was what was widely billed as Harriet Harman's Equality Act – but which actually incorporated four EU directives¹² and merely rubber stamped them.

In theory, there is a procedure for national parliaments to force the Commission to re-consider a law if a third of national parliaments believe it goes against or especially breaches principle of subsidiarity. However, only one directive has ever gone through the first phase of this process and no directive has ever been dismissed as a result of this fragmented national parliament veto power. This dismal Yellow followed by Orange EU Card system is yet another token democratic check. The Commission is not sin binned – it can even bring back exactly the same proposal some time later.

Another supposedly 'democratic' innovation is COSAC (Conference of European Union Affairs Committees) which at least consists of representatives from the national parliaments and MEPs.¹³ Andrea Leadsom rightly states that under the Lisbon Treaty COSAC was given the power to submit opinions to the Commission and review Justice and Home Affairs legislative proposals. However, its agenda is set by the European Parliament, which also funds it. Moreover, its contributions aren't binding so can be effectively ignored.¹⁴

In the light of the Commission's almost total lack of democratic accountability, it is salutary to observe that the Commission feels compelled to conduct external opinion surveys on detailed policy areas with polling samples so small that they are practically meaningless.

Moreover, the opinions canvassed include pro-EU lobbyists who naturally are keen to talk up the Commission and its work. The published report then naturally lavishes praise on the Commission's programme. One perfect example of such hubris is the report on the European Institute of Innovation and Technology which has the task of 'enhancing innovation in the European Union' and 'facilitate transitions: from idea to product, from lab to market, from student to entrepreneur'. This is achieved by the organisation integrating 'higher education, research and business... through our Knowledge and Innovation Communities (KICs), focused on the following topics: climate change mitigation (Climate-KIC), information and communication technologies (EIT ICT Labs) and sustainable energy.'¹⁵

In this study, the European Commission based the report on a mere 187 contributions (online and written submissions) which the Commission claimed was from a 'wide range of stakeholder organisations'. By way of contrast, the BBC reported in June 2013 that the UK alone has almost 270,000 technology companies according to the National Institute for Economic and Social Research (NIESR).¹⁶

Despite such a minuscule sample, the Commission found that there was a 'widespread consensus that the main added value of the EIT is the seamless integration of higher education, entrepreneurship, research and innovation'. Moreover, the report consensus also proclaimed the 'importance for the EIT to engage in its educational mission' and be part of the Horizon 2020.

The report outlined the various options for the 2014-2020 and, not surprisingly, preferred Option 3 which seeks to extend the 'Knowledge and Innovation Communities' (KIC) so that they numbered nine by 2020. Such an expansion would require a budget of a truly staggering 2.8 billion Euros over the 2014-2020. Moreover, the EIT HQ alone would require a budget of some 100 million Euros.¹⁷

On such paltry and biased findings, the Commission claims that its programmes are effective and actually deserve greater funding. However, the lack of real EU democratic accountability to the parliaments of the member states means that such unwarranted praise generally goes unchallenged. It is deeply concerning how the EU is able to 'buy' support through the use of its (British and other European taxpayers') funding largesse to help fund major stakeholders. In the environmental area, for example, the EU now substantially funds many household name UK charities. This might be called 'institutional corruption'. This is undeniably the EU manipulating public opinion in favour of its own agenda through the mouthpieces of so-called independent organisations. Other briefing documents on education and culture will similarly show that the EU's largesse extends far and wide and is part of its attempt to influence public opinion in the member states.

The European Parliament

The European Parliament is at least elected and has some, albeit pale and remote, democratic mandate. Many of the best MEPs are respected because of serving as elected national politicians rather than as part of the EU. Britain is represented by 73 MEPs out of a total of some 766 (following Croatia's accession in July 2013). After the 2014 European Parliament elections, Britain will retain 73 MEPs but the chamber will be reduced to 751.¹⁸

In England, groups of MEPs represent millions of people in huge EU-inspired regions (along the lines of German Lande) and are elected from a party list system. In these vast regional constituencies, MEP seats are allocated according to the proportion of votes that each party receives. Under the British European Parliament election system, Scotland, Northern Ireland and Wales are all individual constituencies and thus each elects a number of MEPs according to the respective size of their voting populations.

Despite its role as the elected institution of the European Union, the European Parliament is not famed for rejecting Commission laws, as the huge majorities in favour of the Commission's legislation is ample proof. The Parliament is also just as devoted to extending its powers and budget as the Commission.

As for the functioning of the Parliament, many laws involving massive costs and burdens are often passed by the European Parliament with only a show of hands. Whilst MEPs can vote electronically, which gives an accurate overall result called a 'Roll Call' vote, and shows how individual MEPs voted,¹⁹ the show of hands is preferred when quite literally hundreds of amendments are up for the vote (the rumour is because the Parliament bungled the contract with the machine suppliers so using the machines for all votes would be prohibitively expensive). Whilst Westminster may seem quaint, the lobby system of voting allows for better bonding between representatives and seems far more trustworthy in its records.

Any footage of a Parliamentary voting session quite clearly demonstrates that the 'show of hands' voting process is nonsensical. Quite often, if hand votes are checked electronically the result is the opposite to that originally recorded. It is also frequently chaotic, and occasionally tragic.

On the 13th March 2013, a voting session lasted two and a half hours with an almost constant flood of hands up voting. The stress was such that a Greek MEP, Georgios Papastamkos collapsed and he remains gravely ill.

Detailed analysis of Commission legislative proposals is done by the relevant Committee, which promptly delegates the oversight role to what is termed a rapporteur (reporter). Generally, this is an individual MEP, assisted by the Committee's staff and other EU experts, who drafts the report which encapsulates the European Parliament's view of a particular piece of legislation. Of course, other MEPs can suggest amendments to the report but, as the House of Commons Library report noted, the real time to influence policy is during the early stage when it is still being drafted by the Commission.

The Parliament not only cannot propose legislation, it has no ministerial responsibility and its control over the Commission is similarly token. Occasionally, it will play to the galleries and reject a Commissioner candidate, and has even succeeded in making thrown all twenty Commissioners out of the Commission under Jacques Santer. Four of those commissioners including Neil Kinnock later returned as Commissioners. Nor has it ever held the Commission properly to account for what is now nineteen years that the accounts haven't been signed off by the official Auditors.

The UK commentator Simon Jenkins wrote in the Guardian that the European Parliament has 'no governing party discipline and reflects no identifiable interest, culture or 'demos'²⁰. Needless to say, Conservative MEPs battle hard to cut the EU's spending especially during this time of austerity, but it is an uphill struggle against those who wish to fund their ever expanding federalist dream. Professor Simon Evenett, Professor of Economics at the University of St. Gallen in Switzerland, noted the absurdity of the EU imposing budget cuts on member states whilst, at the same time, European Commission President Barosso 'repeated his demand that the EU member states give the European Central Bank billions of Euros to invest in infrastructure'. Professor Evenett noted that 'at best, this shifts the spending off national balance sheets; at worst, it is incoherent²¹.'

VÁCLAV KLAUS spoke to the European Parliament on the 19th February 2009 on the democratic gap between this EU institution and the voters of the member states. In his speech, he asked the Parliament:

"Are you really convinced that every time you take a vote, you are deciding something that must be decided here in this hall and not closer to the citizens, that are inside the individual European states? The present decision-making system of the European Union is different from a classic parliamentary democracy, tested and proven by history. In a normal parliamentary system, part of the MPs support the government and part support the opposition. In the European Parliament, this arrangement has been missing. Here, only one single alternative is being promoted, and those who dare think about a different option are labelled as enemies of European integration. There is also a great distance (not only in a geographical sense) between citizens and Union representatives, which is much greater than is the case inside the member countries. This distance is often described as the democratic deficit, the loss of democratic accountability, the decision-making of the unelected – but selected – ones, as bureaucratisation of decision-making etc. The proposals to change the current state of affairs – included in the rejected European Constitution or in the not much different Lisbon Treaty – would make this defect even worse.

Since there is no European demos – and no European nation – this defect cannot be solved by strengthening the role of the European Parliament, either. This would, on the contrary, make the problem worse and lead to an

even greater alienation between the citizens of the European countries and Union institutions²².”

To such mild criticism and reality call, a large number of MEPs marched out of the European Parliament as reported by fellow MEPs and the media²³. It was a telling indication that the European Parliament is as intolerant of dissenting views and democracy as the European Commission.

The reason for the European Parliament’s intolerance to criticism is obvious. Indeed, the Director of the Centre for European Reform Charles Grant points out that ‘Many MEPs have little connection to national political systems²⁴.’ and that ‘much of the time, and that ‘the parliament’s main priority appears to be boosting its own powers.’

In his view, the European Parliament ‘always wants a bigger EU budget and a larger role for the EU, but there is little evidence that many voters think the same way. That may explain why, though the Parliament’s powers have grown steadily since the first direct elections in 1979, and post the Lisbon Treaty, turn-out has declined in every subsequent election (from (European average 63% in 1979 to 43% in 2009).²⁵ In the UK, it was even less at 35% in 2009.²⁶

The Council of Ministers

The Council of Ministers (EU Council) is the fourth main leg of the EU’s legislative system, and it also has its own dedicated civil service secretariat. It has over 150 working committees, special committees and steering groups. In 2011, the wage bill for the Council was 208 million Euros.

Within it, the General Affairs Council is attended by Europe Ministers and does much of the legwork. In addition, there is Coreper or the ‘Committee of Permanent Representatives’ with a body called UKREP (UK Permanent Representation to the EU) representing Britain. This is where the national civil servants, including the UK’s, come to negotiate the Council decisions on proposals from the Commission. Coreper I monitors the detailed technical matters whilst Coreper II is the strategic arm and looks at budget issues or more politically sensitive matters.

Second only to the Director Generals (DGs) of the Commission in terms of power, Coreper also weilds extensive power. Both of course are civil servants ,not elected democrats, so this is a world where Sir Humphrey reigns supreme whilst Ministers, including even some Commissioners, play the underdog. Commissioners of course are not elected either, other than by a vote of MEPs, but wield real influence. The EU’s very own Foreign Minister, Baroness Ashton, is believed to have never been elected to any public office, anywhere. The famous British diarist and Conservative Minister, Alan Clarke described the inner workings of COREPER in his diary and noted the absence of any

real democratic accountability. He wrote that 'Not really that it makes the slightest difference to the conclusions of a meeting what Ministers say at it. Everything is decided, horse traded off by officials at COREPER. ' and 'The Ministers arrive on the scene at the last minute, hot, tired, ill, or drunk (sometimes all of these together), read out their piece and depart.'

In May 2013, the House of Commons Library published a report on the EU's legislative process. They found that 'although the Council publishes voting records and other information about its meetings, the lack of transparency in EU decision-making has made the study of voting behaviour both problematic and fascinating'. It is rather concerning that a Council which has a major impact on British laws largely works in secret. This is extremely damaging for a functioning democracy requires transparency in order for it to work effectively - or else powerful self-serving elites take key decisions far from the accountability of the ballot box and wishes of the people.

The this same Commons Library report found that QMV (Qualified Majority Voting) - which requires 74% in order to pass legislation and is in theory and important safeguard for national interests - is actually rarely used. This is because much of the decision-making process actually takes place beforehand in Coreper and Council working groups.

Academic studies have put the number of decisions at this level at between 70-90% - with the decision later rubber stamped by Council. This is because, as one study noted, such confirmations are rarely accompanied by any further discussion amongst the elected Ministers. Global Britain states in their briefing report of February 2011 that 'informal' UK voting power in Coreper is only some 3.7%.²⁷

Working documents from Coreper and the working groups are not publicly available, only their agendas. The House of Commons Library report notes that consequently, it is not clear 'how agreements are reached before Council meetings, how or when pressure is applied, or by whom, or what other elements affect the behaviour of ministers in the Council when QM decisions are taken.' In other words, the process of factors that might 'influence the outcome of a QMV such as coalition-forming, informal bilateral contacts and of course, horse trading' is completely opaque to the peoples of the member states which they are meant to be representing.

On some 72 issues such as Taxation, Social Security, Common Foreign and Security/Defence policy, unanimity is still required within the Council – meaning all must agree

The Lisbon Treaty abolished such a requirement for 41 'activity areas' (i.e. legal bases) in addition to the 44 which were abolished under the Treaty of Nice. This means that 85 'activity areas' require the EU co-decision process. A Votewatch Europe report found that during 2009-2012, 65% of Council decisions were taken unanimously. Indeed, the report quoted a study which found that since 1993, 80% of Council decisions were taken without opposition.

The UK's voting power amounts to 8.2% under the Qualified Majority Voting in the Council of Ministers following Croatia's accession to the EU. The power to stop legislation requires more than 26% of the vote (or 260 votes out of 352) so the UK – routinely isolated - finds it impossible to block legislation which is harmful to UK interests. For example, the UK tried to block the destructive Agency Workers and the Alternative Investment Fund Managers Directives but both were pushed through despite UK opposition.²⁸

This system which puts the emphasis on public facing consensus rather than frank debate has seen the evolution of what is termed 'shadow voting'. This means that if a member state knows it will be outvoted on an issue, it will tend to join the majority. Opposition is thus neutered into simply voicing reservations or clarification statements to justify their yes vote. In the report's reference period, the UK, Germany and the Netherlands led the way in such statements.

In addition, a 2012 study by Dr Stephanie Novak found that the UK is the 'only country in the EU to have moved away from existing coalitions and stand apart.' This was borne out by other studies which stated that the UK did not join the other large EU States (Germany, France, Italy and Spain) in less explicit contestation of the majority but showed the biggest gap in its voting behaviour from the other coalitions in the Council.

Moreover, Votewatch Europe found in a 2012 study that in the EU 27 the UK voted most often against the majority in nearly one out of ten votes. Indeed, they found that between June 2010 and October 2012, the UK found itself in a minority of just one - an extreme position in diplomatic terms - on no less than 15 occasions²⁹ as the UK either voted against or abstained. France on the other hand always sided with the majority and never recorded a single 'No' vote. In short: far from having the influence it claims as a benefit of EU membership the UK is becoming increasingly isolated in the Council of Ministers.

Judicial Power - The European Court of Justice (ECJ)

If there is no real accountability in the European legislative process, then judicial oversight and restraint becomes even more crucial in ensuring that the executive branch is held to account and within the confines of their properly defined scope. However, in this vital function, the European Court of Justice (ECJ) is singularly failing the British people – and thus democracy. This failure is so conspicuous that Professor Damian Chalmers of the LSE describes the court as 'now little more than a rubber stamp for the EU'.³⁰

This is a damning indictment of a Court which was established with the aim of rejecting EU laws which broke the principle of 'subsidiarity': this establishes that laws should be made at the lowest level of European authority; which ultimately means member states' local and national Government.

Indeed, in March 2012, Professor Chalmers own blog noted that in thirty five years of the history of EU 'fundamental rights' law, not one directive has ever been struck down for going against these rights or annulled for offending the subsidiarity principle. On the other hand, the Professor notes that the Court is "quick to annul measures that touch on its institutional prerogatives" such as the international agreement setting up a unified European and Community Patents Court. He states baldly that "this shameful record suggests that if you are a democrat or a liberal, you cannot be a supporter of the Court of Justice."³¹

The Court of Integration

Luís Miguel Poiares Pessoa Maduro, Advocate General to the ECJ in a Marks and Spencer case is illustrative of the how the ECJ helps to drive EU intergration. He stated that: "In this essay, I argue that national constitutionalism is simply a contextual representation of constitutionalism whose dated and artificial borders are challenged by European constitutionalism. In themselves, constitutional ideals are not dependent nor legitimised by the borders of national polities." He also wrote the following statement "It is artificial to always take the parliamentary system as the default form of representation and its decisions as a simple expression of the *volonté générale*." This is an extraordinary statement for an EU lawyer and suggests that the EU now regards is above the will of the people and thus of Parliament.

The catalogue of the abuse of judicial power does not end there. Professor Chalmers notes that of the few cases of the Commission bringing enforcement cases against member states violating EU law, the Commission won over ninety per cent between 2006-2010. On the few occasions, the Commission did lose, it was largely due to not following procedure correctly. In short, the Court acts as a 'legal rubberstamp'.

However, a much greater danger lies in the Court's role in judging 'points of EU law' which have been referred to it by the member states' national courts. As Professor Chalmers points out the Court's long backlog only benefits those parties seeking to extend EU legal obligation rather than retrenchment.[ref Chalmers blog] The effect is that latter parties seek rulings in their domestic courts in order to seek decisions that must fall within the current definition of EU powers. Consequently, the ECJ is a one-way traffic in favour of EU power extension as the Court almost never reverses its earlier rulings.

This extension of judicial power can be summed up by examining the Court's impact in one year, up to March 2012. In that time, the Court has banned most

forms of stem cell research and prevented 'general restrictions being imposed on secret processing of personal data without subject's consent'. In February 2012 alone, the Court gave important rulings on VAT, environmental law and a host of others.³² Moreover in recent history, the Court has denied the French constitutional council any role in determining whether French laws, that are even remotely connected with the EU violate the French Constitution.

However, it can be argued that this judicial extension of powers pales into insignificance relevant to the 'Fiscal Compact' or the 'Treaty on Stability, Coordination and Governance' which came into force in January 2013 and must be implemented by January 2014.³³ The Treaty will give untrammelled fiscal and welfare power to the Court with the power to levy gigantic fines on countries which are failing to bring Government debt down sufficiently, has a budget deficit of more than 3% of GDP or even for providing inaccurate statistical information to Eurostat. The Treaty locks the countries into a structure which forbids unilateral amendment.

This means that nations will be forbidden from backtracking on their guarantees regardless of their peoples' democratic choices. This reduces the democratic link between Parliament and their voters to an irrelevance by an EU superstate which has delegated all fiscal and welfare power to unelected judges and Commission technocrats. Such individuals have the power to ignore the manifestos of democratically elected Governments or impose punitive (and repeatedly) fines until the member state obeys the rulings from Brussels. In short, any pretence of the Court having an overseeing impartial role has been forfeited by this Treaty. The ECJ has become a political instrument to empower and enforce the diktats of Brussels – albeit totally without the restraints of democratic accountability in the form of elections.

Chalmers also questions whether the Court has the judicial know-how for such a powerful role. He notes in 2012 that of the Court's 27 judges, only ten had domestic appellate court (or above) experience. In its structure, the Court decides cases in Chambers of three to five judges. Unbelievably, two of the Court's Chambers had only one judge with actual appellate experience.³⁴

The growing dictatorial power of the European Court of Justice was obvious even in 1998. In an academic paper entitled 'The European Court of Justice, National Governments, and Legal Integration in the European Union' by Geoffrey Garrett, R. Daniel Kelemen, and Heiner Schulz, it was stated that:

"The accretion of power by the European Court of Justice (ECJ) is arguably the clearest manifestation of the transfer of sovereignty from nation-states to a supranational institution, not only in the European Union (EU) but also in modern international politics more generally. The ECJ is more similar to the U.S. Supreme Court than to the International Court of Justice or the dispute panels of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO).

The Court interprets EU treaties as if they represent a de facto constitution for Europe and exercises judicial review over laws and practices within member states. The ECJ is thus in the business of declaring extant national laws and the behavior of national governments 'EU-unconstitutional'.³⁵

The European Court of Justice is not fit for purpose. It will shortly be granted the power to force countries into actions which run directly against the wishes of their people. The ECJ is both undemocratic and tyrannical.

Conclusion

It is clear that the democratic mandate for the European Union and its attendant institutions no longer exists. Euroscepticism is now the majority view of such countries as Germany, Spain, France, Italy and Britain as the member state peoples have watched the sheer dithering incompetence of the EU on open display. Moreover, the wishes of the people have been routinely steamrollered in such countries as Portugal, Italy and Greece. It has meant that the EU's glaring democratic deficit is now painfully apparent to even the strongest supporter of the European Union 'dream'.

The creation of this democratic deficit is hardly surprising to anyone who has studied the recent history of the European Union. Ever since it rejected the 'No' votes in French, Dutch and Irish Referendums on the Lisbon Constitution/Treaty, the bureaucrats of Brussels have always paid lip service to democracy. EU institutions are conspicuous by the almost total absence of accountability to the member state peoples who pay for their grandiose ambitions.

Institutions such as the European Court of Justice which were meant to rein back these bureaucratic fantasies have become their allies in a rush for unelected and unaccountable power. The EU is forming itself into a superstate whose control is such that the democratic agendas of elected Governments can easily be overturned and their leaders turfed out in favour of compliant technocrats.

Britain must quit the European Union in order to restore democracy back to Britain. It is dictatorship to have fifty percent of our laws dictated to the British people by unelected unaccountable bureaucrats. The Coalition Government has freed Britain from the EU's regional assemblies, development plans, local plans and other measures. It must free the country of the rest of the EU's insidious power.

The implications of failing to leave will be dire. Simon Jenkins writing in the Guardian rightly warned that 'democratic deficits cannot last for long without lapsing into dictatorship or mob rule.' Britain must make sure that it is not dragged down in the ensuing maelstrom. Quitting the European Union is the only way to guarantee British democracy and ensure judicial oversight is proportionate and sensible.

Note: These MEP Briefing notes are provided for general information about the EU for constituents and UK citizens and draw on published and unpublished or original research.

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