



Date: 18 March 2021

Location: Virtual meeting
on Zoom

APPG on the Rule of Law

Scrutiny of the UK-EU Future Relationship – Parliament's role in making Brexit work

Parliamentarians in Attendance

Sir Bob Neill MP, Joanna Cherry MP, Lord Anderson of Ipswich QC, Lord Pannick QC, Lord Garnier QC, Baroness Ludford, Lord Thomas of Gresford, The Lord Bishop of Leeds, Jonathan Djanogly MP, Lord Kinnoull, Baroness D'Souza, Lord Macdoald of River Glavan QC, Baroness Finlay, Lord Hannay of Chiswick, Baroness Meyer, Baroness Hamwee, Lord Carlile of Berriew QC, Sir Bernard Jenkin MP

Report

The APPG on the Rule of Law met to consider the arrangements for Parliamentary scrutiny of government decisions under the treaties governing future relations between the UK and the EU. At the heart of the matters discussed was the necessity of effective scrutiny of Government action for the Rule of Law to be upheld.

Dr Brigid Fowler of the Hansard Society provided an analysis of the existing scrutiny arrangements in Parliament, and some of the challenges Parliament might face when scrutinising executive action under the Withdrawal Agreement and the Trade and Cooperation Agreement. Dr Fowler observed that the development of the scrutiny arrangements was likely to be a work in progress with an expectation of gradual adjustment and review. In part this gradual development of the scrutiny arrangements might reflect developments in the relationship between the UK and EU, with the potential for further agreements to be made between both parties.

Dr Fowler set out the changes being made to the Lords European Union Committee, which is set to replace its suite of policy focussed sub-committees with a single European Affairs Committee and a single sub-committee for considering the Northern Ireland Protocol. She described some of the legacy challenges facing the Commons European Scrutiny Committee, including its more limited focus.

Dr Fowler concluded by observing that arrangements for a Lords Question time for Lord Frost had been put in place, but that it remained to be seen if the Commons would be satisfied with that, and noted that it was significant that the Cabinet Office was taking on responsibility for European questions in Parliament.

The Rt Hon Hilary Benn MP, former chair of the Select Committee responsible for overseeing the Brexit Department and the UK-EU future relationship, emphasised the great importance of Parliamentary scrutiny and raised some of the challenges he and his Committee had faced when questioning ministers.



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Mr Benn said the need for scrutiny is just as great, if not greater than it was before and predicted there was a lot of future work to be done on Brexit. He identified that the European Scrutiny Committee could have its terms of reference changed in order to conduct wider scrutiny, but considered that the Government may be reluctant to do so.

He expressed frustration with Government accountability on the work of the Joint Committee, with Minister's telling his Committee that 'confidentiality' prevented them from elaborating on what had or had not been agreed. Referring to the Northern Ireland Protocol, he felt that further extension of the grace periods would be useful in reducing tensions in Northern Ireland, expressing concerns about the politics and the need for sensitivity.

Mr Benn raised the prospect of future agreements in certain areas where there were unresolved practical difficulties arising from Brexit, including touring arrangements for artists and performers, and the transport of food products from the UK to Northern Ireland. Scrutiny of these difficulties would likely help push the UK and the EU closer to compromise.

On the Parliamentary Partnership Assembly Hilary Benn said the big question was whether it would be an annual meeting of a large delegation, or a more active body shadowing and scrutinising the Partnership Council and Joint Committee on behalf of the UK and EU Parliaments. He noted the Government had said they were not opposed to the Parliamentary Partnership Assembly, but that it would need a motion in Government time for progress to be made on setting up the UK delegation.

Susanne Oberhauser, the head of the European Parliament UK Liaison Office, provided an insight into the scrutiny arrangements the European Parliament and put forward some of the ideas being debated for the way that the Parliamentary Partnership Assembly would work.

Ms Oberhauser started by setting out the scrutiny arrangements the European Parliament had used during the negotiations to hold the Commission to account. Michel Barnier, the EU Chief Negotiator, reported regularly to a group of MEPs including committee and political group representatives to provide updates before and after meetings with the UK side. The basis of this is Article 218 of the Treaty on the Functioning of the European Union, which says that the Parliament has to be immediately and fully informed at all stages of the procedure when it comes to negotiating International Agreements.

She continued, saying that the TCA is still being considered by the European Parliament. She explained that the European Parliament has ten conditions it wants the Commission to meet, including providing information and documents on the Partnership Council to relevant committees of the parliament, and consulting the Parliament on any remedial action under the TCA. The Commission is expected to respond shortly, making commitments to the Parliament that will ensure the TCA is agreed by the European Parliament. Once the TCA is agreed, Maros Sefcovic, Co-Chair of the Partnership Council, and the EU Commissioners will be accountable to the European Parliament and its Committees.

Ms Oberhauser noted that whilst the terms of reference for the Parliamentary Partnership Assembly were rather vague, relating to being informed and being able to make recommendations, that there was a potentially significant role in being able to summon the co-chairs of the partnership council. She said that the European Parliament hoped to establish their delegation to the PPA at the same time as the Parliament voted to approve the TCA, and that it would then be for the UK and EU Parliaments to determine the working methods, procedures and modalities for the PPA.

Ms Oberhauser said that from the European side it was clearly expected that the PPA will be tasked with monitoring the implementation of the TCA and as a mechanism for joint scrutiny of the partnership council. There is also the opportunity for the PPA to be a forum for legislative dialogue to make recommendations to the Partnership Council on areas where further cooperation might be beneficial. The European Parliament also believe it would be useful for the PPA to have the remit to cover the Withdrawal Agreement.

His Excellency Alexandre Fasel, Swiss Ambassador to the UK, spoke about the Swiss experience of cooperation with the EU through joint committees and the Swiss Parliament's role in this. He noted that Switzerland is one of the most integrated countries with the EU without being a member. Switzerland and the EU have a relationship governed by a structure of over 120 bilateral agreements and around 20 core sectoral agreements.

His Excellency explained that joint committees formed of civil servants oversee the functioning of these agreements, also providing advice and consultation on further development over the life of the agreement. Generally the committees work on finding equivalence between Swiss and EU Law or on Switzerland adopting EU law. If there is a need for Switzerland to adapt to evolving EU law, then the joint committee makes a recommendation to the Government. Then, depending on competence, either by statutory instrument or primary legislative procedure through parliament the Government may formally adopt the draft recommendation made by the joint committee. In Switzerland any new law can be challenged in a referendum.

Ambassador Fasel said that where Switzerland is an associate member of certain EU agreements they contribute to discussions but do not vote. The level of involvement varies by different agreement, with Switzerland having a role in working groups and feeding into discussions without formally voting on EU law.

He explained that if agreement cannot be reached in the joint committee between Switzerland and the EU, there is no formal dispute resolution mechanism, so if agreement cannot be reached between the two the dispute can drag on for years – some have done so for over ten years. The EU is keen for Switzerland to agree to a dispute resolution process in the Institutional Framework Agreement currently being negotiated which could be similar to that agreed between the UK and EU in the Trade and Co-operation Agreement.

Parliament has an active role in defining Swiss policy toward the EU. There is a Swiss Parliamentary delegation to the EU which meets regularly with MEPs, but Ambassador Fasel noted that it is not a formal joint Parliamentary body as proposed by the Parliamentary Partnership Assembly under the TCA. Something similar could develop from the Institutional Framework Agreement currently under negotiation.

Ambassador Fasel concluded by mentioning the role of the Cantons, who must be consulted and informed where certain decisions have an impact on their competencies.

Further Discussion

During the discussion following the expert speeches, Parliamentarians discussed the parallels that might be drawn between the Swiss Cantons and the constituent nations of the United Kingdom. They then turned to consider the reforms to the Lords European Union Committee that are due to take place at the end of March in more detail. There was also discussion about the potential for the devolved Parliaments of the UK to contribute to the

Parliamentary Partnership Assembly, possibly as observers if the agreement wording only allowed for the European and Westminster Parliament to form the delegations to the Assembly.

The meeting was a success and provided MPs and Peers with an opportunity to consider the arrangements for Parliamentary scrutiny of Government actions during further negotiations with the EU, and the importance of establishing effective scrutiny mechanisms in Parliament.