DEMOCRATIC
FUTURES

☐Electoral
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CLOSE THE GAP
Tackling Europe's
democratic deficit

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INTRODUCTION: IT'S DEMOCRACY, STUPID

Britain's relationship with the European Union has once again forced itself to the front and centre of political debate. The 2014 European elections, UKIP's rising popularity and the Conservatives' promise of an in-out referendum have intensified arguments around what was always a hotly contested subject.

These debates tend to have one issue at their core – the economic aspects of Britain's membership of the EU. Do we benefit economically from membership, or does it cost us? And does the free movement of labour undermine or sustain our economy?

But there is another vital debate to be had – one which is sometimes obscured by this focus on the economy. And that is the debate about Europe's democratic deficit.

We offer 12 practical solutions designed to close the gap between the EU and the people of Britain

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The Electoral Reform Society (ERS) is a frequent commentator on the growing gulf between people and politics in the UK. We want everyone's voices to be heard, and we want the widest possible range of views and backgrounds represented in national political institutions. We offer an analysis of political disengagement in Britain and a raft of practical solutions to address the problem.

But these values, analysis and solutions should not be limited to the national scene – particularly when European politics presents such pressing and complex challenges to the legitimacy of our democracy.

This report examines the low levels of trust which British citizens have in the EU, and the poor levels of engagement our national Parliament has with European affairs. We argue that there is a serious democratic deficit at the European level, and that while this is true across Europe, it is a particular problem for Britain.

The ERS does not take a position on whether the UK should, in the long run, remain in the EU or whether it should quit. Rather we offer practical solutions to tackling the democratic deficit which currently exists, given our membership of the EU.

To that end, we offer 12 recommendations designed to close the gap between the EU's institutions and the people of Britain. These range from empowering the UK Parliament to giving citizens more direct voice in Europe. Some can be implemented at the European level, which would make them relevant to any renegotiation conducted by the British government in the future. Others can be implemented at the national level, by the UK Government or by political parties. All of them would strengthen our democracy.

Our 12 recommendations

National parliaments
- The adoption of 'green cards', whereby national parliaments can instigate European legislation, should be a long-term priority. Red cards (when parliaments come together to veto legislation) should also be adopted, though for the time being the European Commission should create an informal agreement to treat a certain number of objections from national parliaments as a de facto red card. Increase the amount of time for an objection (or 'reasoned opinion' to be issued from eight weeks to 12 weeks
- The UK Parliament should be able to scrutinise the Government's negotiating position before Council meetings, as well as after
- The UK Parliament should 'mainstream' European policies by sending European legislation to the appropriate committee depending on the policy area
- Westminster should organise a Speaker's Conference on strengthening Parliament's role in EU democracy, and take proposals forward to a pan-European conference of parliaments
- Give devolved parliaments and assemblies the ability to hold UK ministers to account on pressing issues at EU negotiations, and devolved ministers the right to participate in Council meetings
- Parliament and the UK Government should put in place

mechanisms for giving citizens a direct say in the shaping of EU legislation

The European Parliament
- The periodic decampment of the European Parliament to Strasbourg should end
- The introduction of a candidate-centred, proportional system should be adopted for UK elections to the European Parliament. We strongly advocate the Single Transferable Vote, but an open-list system would be an improvement on the current closed-list system

The European Commission
- The European Council should under no circumstances over-rule the 'candidate model' of electing a Commission president for the 2014 election, but should negotiate with European political parties on a clearer set of rules for future elections
- In the long term the Commission should shrink in size. In the short term the next Commission should aim to divide Commissioners into 'seniors' and 'juniors'

Political parties
- Political parties should seek to improve gender representation in the European Parliament by increasing the number of female candidates they put forward for election in winnable positions
- Parties should attempt to recruit candidates with a wider range of views on Europe. EU policy affects agriculture, trade and almost every other area of British public life, and this should be emphasised when recruiting candidates

These are practical steps which can be taken here and now, given the UK's current relationship with the EU. Those at the two extremes of the European argument tend to claim that their position holds the ultimate answer to the democratic deficit. But in fact, neither withdrawal from Europe nor a more federal Europe necessarily improve democracy for British citizens. Not only are they much more remote than our 12 practical steps in terms of achievability; but they also have serious defects in democratic terms. Before proceeding to the main body of our report, we set out why neither withdrawal nor federalism are necessarily the answer to the democratic deficit.

Withdrawal: a final solution?

Opponents of the EU often couch their arguments in democratic terms. For instance, the Eurosceptic Conservative MEP Dan Hannan has described the EU as "undemocratic from the start".[1] Nigel Farage has described the 2014 European elections as "the battleground to bring back national democracy"[2] and the late Tony Benn simply stated that "the European Union is not democratic".[3] For some people, withdrawal would seem to be the best way to revitalise democracy.

But how much would leaving the EU reduce its undemocratic effects on Britain? It all depends on the relationship the UK builds with the EU after it leaves.

By leaving the EU, Britain could end up with even less voice in key European decisions. The Norwegian government (not a member of the EU) has recently completed a comprehensive study of Norway's relationship with the EU through the European Economic Area. The chair of the committee which wrote it, Professor Fredrik Sejersted, described Norway as "almost as deeply integrated into the EU as the UK".[4] The report comments on the nature of Norway's relationship with the EU, saying: "During the 1990s the EEA Agreement was often referred to as a 'fax-democracy'. These days it is perhaps more appropriate to say that Norway 'downloads' policy and legislation from Brussels."[5] For a country such as Norway, with a population of only just over five million, this is perhaps not such a problem – the country maintains significant lobbying facilities in Brussels and it is unlikely that Norway would hold much weight in internal EU deliberations were it a member, given its population size.

But for a country the size of the UK, with the EU's third largest population, an EEA-style relationship would certainly leave the UK with significantly less influence over portions of European law.

1   See www.dailymail.co.uk/news/article-2188453/The-case-Europe-MEP-Daniel-Hannan-reveals-disturbing-contempt-democracy-heart-EU.html

2   See www.huffingtonpost.co.uk/2014/01/16/ukip-nigel-farage-europe_n_4607574.html

3   See www.totalpolitics.com/articles/258892/tony-benn-interview.thtml

4   BBC News, 'Non-EU Norway 'almost as integrated in union as UK'' www.bbc.co.uk/news/world-europe-16594370

5   *Inside and Outside* Chapter 27. Unofficial English translation available at: www.regjeringen.no/upload/UD/Vedlegg/eu/nou2012_2_chapter27.pdf

Another alternative is the 'Swiss route' – a series of bilateral trade agreements with the EU. But Switzerland still sees itself as affected by rules made in the EU even in areas it does not have bilateral deals on, such as finance.[6] Globalisation and the structure of international trade mean that no country is truly 'sovereign' in the classic sense of the word. Problems with the Swiss model can also be seen in the results of a recent referendum on immigration quotas from EU migrants into Switzerland. The Swiss narrowly voted for the referendum, which has already had an impact on their dealings with the EU.[7]

Opponents of leaving the EU argue that it could reduce, rather than increase, Britain's agency on the international stage. Even a rather simple free trade agreement with the EU would not change the fact that much of British public policy would be affected by being so close to the trade bloc, as is the case in Switzerland. It could also reduce Britain's agency on issues like the environment, or international trade where the EU works closely together to achieve common goals.

There is no way of avoiding the "declining problem-solving ability of the nation state in a globalisation context",[8] especially with regards to cross-border issues (such as economic competition, the environment, migration, terrorism and international crime). Leaving the EU does not necessarily increase the agency of the nation state.

Federalism: democracy through state-building?

On the other extreme, radical pro-Europeans see the creation of a federal Europe as the answer to the democratic deficit. It is relatively straightforward to imagine how the structures of the EU could be transformed into those of a federal state, with the Commission becoming a government, the Council of Ministers becoming a Senate and European political parties formalising themselves into genuine trans-continental parties.

The commonly cited complaint against this model is that one

cannot have a democracy without a *demos*, a unit with which people can identify. With 24 official languages, spread across 28 member states, the EU certainly lacks a clear sense of commonality. To some extent all nationalisms are artificially constructed, but there appears to be little sign of a European identity and little sign of a desire for a federal Europe. This creates a fundamental problem: if European citizens do not want a federal Europe, then a democratic state should not be imposed undemocratically. A United States of Europe would therefore seem to lack legitimacy.

Structure of the report

The report proceeds by first providing the principles used to assess Europe's democratic performance (these are: subsidiarity, accountability, representativeness and engagement), and then by carrying out that analysis. Two of the three main EU institutions are then measured against these principles.[9] Our recommendations flow from this analysis, and the report concludes by embedding these proposals in a vision of what a more democratic European Union would look like.

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6   See www.economist.com/news/briefing/21567914-how-britain-could-fall-out-european-union-and-what-it-would-mean-making-break

7   See www.timeshighereducation.co.uk/news/switzerland-downgraded-by-eu-on-research-involvement/2011691.article

8   Quote from Eriksen, Erik and Fossum, John *Rethinking Democracy in the European Union* Page 24.

9   We analyse the Council of Ministers elsewhere in the report.

THE DEMOCRATIC GAP

The original designers of the European Union – such as Jean Monnet, a French civil servant who was never elected to office – did not envision it as a democratic project so much as a technocratic one, in which European institutions would seek to bring the continent together through largely invisible management of the European economy from above.

But as time went on and the EU came to have more and more influence over people's lives, it became clear that it needed to demonstrate democratic legitimacy. This chapter examines the extent to which the EU has fallen short of that goal.

In order to measure the EU's democratic performance, it is first necessary to set out some principles by which we can judge how it stacks up.

The European meaning of democracy
The EU is a unique set of institutions in world politics. In modern history, it is the first and most advanced form of supranationalism – a regional or international institution with its own governing institutions and structures, rather than simply being dependent upon negotiation between states and a small secretariat as in the more classic intergovernmental organisations such as the United Nations.

As supranationalism is unprecedented in modern history, the EU has had to develop institutions with no prior blueprint. Unsurprisingly, therefore, there is a vast smattering of institutions of different types. There are EU courts, the corporatist European Economic and Social Committee, the directly elected European Parliament and intergovernmental summits, amongst others.

This unique institutional structure makes it difficult to apply the usual democratic standards without significant changes of emphasis. Certainly, the principles of representativeness, accountability

and democratic engagement are vital, but the protection of the rights of minorities is perhaps especially important. The EU is a political regime that is, in one sense at least, entirely made up of minorities – each nation is, after all, in the minority. The principle of **subsidiarity** is key in this regard.

Subsidiarity is a founding principle of the European Union. This is spelled out in Article 5(3) of the Maastricht Treaty:

"Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

This is of course a rather vague statement. Under this principle, the 'correct' level of government for any policy is difficult to determine, and may be the subject of some debate. For instance, the Working Time Directive – which regulates the number of hours worked by employees each week – has long been opposed by many British politicians and commentators, who argue that for the EU to press it upon the British population violates British sovereignty. Yet the French government tends to argue that it prevents unfair competition through exploitation of labour. This essentially political argument is couched in an argument about the correct strength of the EU in this area, and the correct level for such an issue to be regulated.

Nevertheless, the essence of subsidiarity is that it protects the democratic self-determination of nation states (as well as lower levels of government) within the transnational framework of the EU. As such, it is a crucial component of any functioning European democracy.

In addition to subsidiarity, there are three other more traditional principles of a democratic Europe.

Firstly, governance should be representative of the European people and flow from the public will. EU lawmakers should be representative in ideological terms, and institutions should be demographically representative in terms of gender, race, class, religion, disability, nationality and region in order to make sure that the voices of EU citizens from all walks of life are heard.

Secondly, people should be able to hold the EU to account. Citizens must be able to reward or punish good or bad behaviour and the performance of those who make decisions. Real accountability makes people feel closer to governing institutions and empowers them. It also has the potential to improve the policy decisions of those in power. Clear lines of accountability should exist between citizens and those who make policy on their behalf in order to guarantee this.

And finally there should be clear channels of engagement, at the ballot box and beyond. Democracy is public reason, as Amartya Sen has said. Elections are a requirement for democracy, but elections without the free interchange of views between citizens, civil society and elected representatives leads to a pseudo-democracy – the institutions and form of democracy, without the content. Democracy is, after all, rule by the *demos*, the people. A democratic system's efficacy can therefore be measured by the level of participation, engagement and trust in it.

These four principles – subsidiarity, representativeness, accountability and engagement – are the basis for judging the EU's democratic performance. In what follows, the 'democratic deficit' refers to the extent to which the EU falls short of meeting these standards.

Measuring the democratic deficit

The 'democratic deficit' is a well-established concept (it was first coined by David Marquand in 1979). In fact, it is even included in the European Commission's web glossary of EU terms.[10] On the more radical end, terms such as 'police state',[11] 'anti-democratic'[12] or even 'Orwellian'[13] have been used about the EU by even rather mainstream critics. Ultimately, the democratic deficit describes the extent to which the EU fails in democratic terms. This section sets out how far it has fallen short.
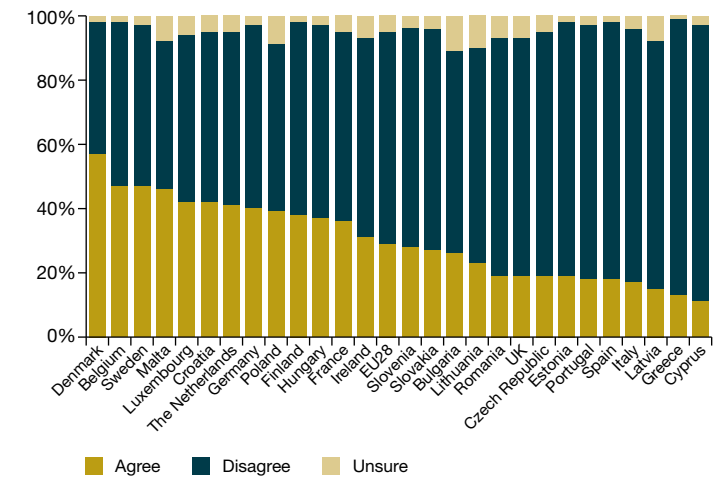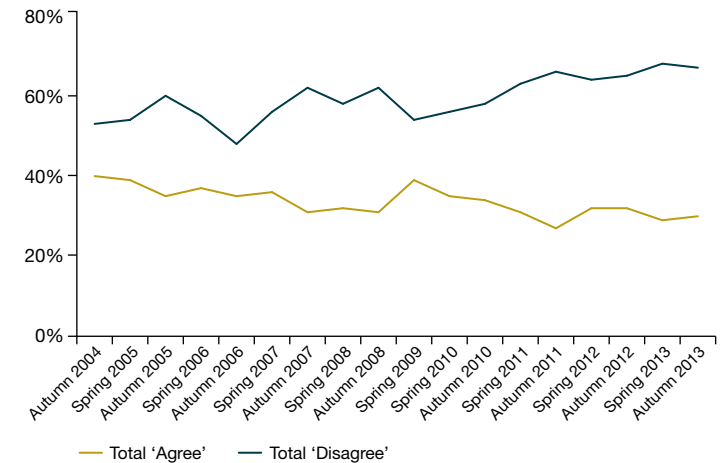
10 See http://europa.eu/legislation_summaries/glossary/democratic_deficit_en.htm

11 See, for instance, www.dailymail.co.uk/debate/article-2118202/Britain-stood-watched-EU-Police-State-grew--protect-citizens.html

12 See www.telegraph.co.uk/comment/telegraph-view/3559542/The-EU-reveals-its-anti-democratic-nature.html

13 See, for instance, the comments of former Czech President Vaclav Klaus: http://ruptly.tv/vod/view/3952/uk-former-czech-president-warns-of-an-orwellian-eu

FIGURES 1 & 2: DOES YOUR VOICE COUNT IN THE EU?[14]

Total 'Agree'   Total 'Disagree'

Agree   Disagree   Unsure

There is a great quantity of polling which sets out the European people's relationship with the EU, and which gives us one measure of the EU's democratic performance. In recent years, the European public has developed a markedly sharper distaste for the EU. For
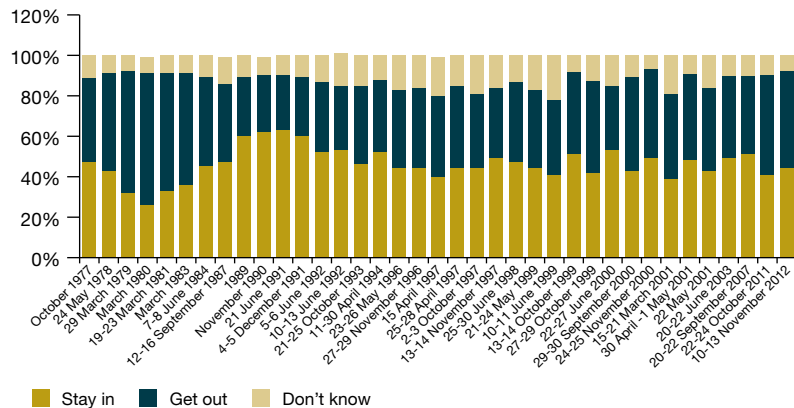
14 Source is Eurobarometer. Figure 1 shows all European countries over time. Figure 2 shows all European countries in the Autumn 2013 wave.

instance, according to Eurobarometer polls there is a clear and widening trend of people tending to believe that their voice does not count in the EU, from a net score of -13 in autumn 2004 to a net score of -39 in the spring 2013 (*see Figure 1*). This suggests that the EU is failing to deliver on representativeness and engagement.

In the UK, 74% feel their voice doesn't count

Britons appear to be particularly likely to feel voiceless in Europe. There is a great range of views across EU nations on how much their voice counts within the EU structure (see Figure 2). But in only one country, Denmark (57% vs. 41%), does a majority of respondents agree with the statement 'My voice counts in the EU'. In the UK, 74% of respondents feel their voice doesn't count. Eight countries score worse, but of these, five (Spain, Italy, Portugal, Greece and Cyprus) are countries currently experiencing austerity measures related to the Eurozone crisis. The other three (Estonia, Latvia and the Czech Republic) are post-communist European states where cynicism of government runs high.

FIGURE 3: SHOULD BRITAIN STAY IN THE EU?[15]
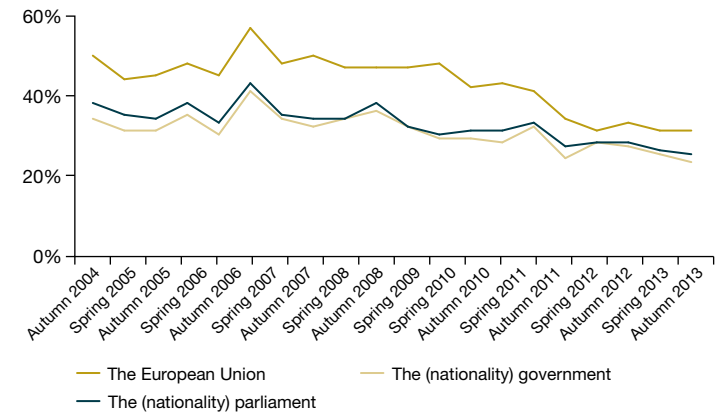

■ Stay in   ■ Get out   ■ Don't know

15 Source: Ipsos MORI polls 1977–2012. Different question formulations in earlier versions. Data taken from: www.ipsos-mori.com/researchpublications/researcharchive/poll.aspx?oItemId=2435&view=wide

The British public has never really been pro-European (*see Figure 3*). Britain has been a member of the European Union and its predecessor, the European Economic Community (EEC), since 1972. The relationship between the UK and the EU has always been more stretched than in most other European states. In 1975 the new Labour government held a referendum on whether to withdraw from the EEC. While the result was two to one in favour of staying in, the debate has never truly gone away.

Support for leaving Europe peaked in the late 1970s, while support for staying in the EU peaked in the early 1990s. In November 2012, 44% were for staying in, and 48% were for leaving the EU.

Another measure of the EU's democratic performance is the degree to which it is trusted by citizens.

FIGURE 4: TRUST IN NATIONAL VS EUROPEAN INSTITUTIONS[16]

— The European Union   — The (nationality) government
— The (nationality) parliament

Across Europe, trust in the EU has in fact always been higher than in national parliaments or governments (*see Figure 4*). But it has collapsed in recent years, dropping from a high of 57% in Spring 2007 to just 31% now. The gap between trust in national parliaments and trust in the EU has also shrunk, from 14% to just 6% now. While national parliaments and governments have also seen a fall in trust, the EU's fall has been faster – though it has noticeably stabilised over the last couple of years.

16 Source is Eurobarometer.

Nonetheless, 31% of European citizens declaring trust in the EU is no cause for celebration. It suggests a serious and widening democratic deficit – people are unlikely to feel represented by an institution that they do not trust, nor are they likely to feel they can hold it accountable.

Democratic law-making

In Britain, there are serious anxieties about the amount of legislation which originates in the EU. For instance, in the second TV debate between Nick Clegg and Nigel Farage earlier this year there was a lengthy discussion about how much legislation comes from Brussels. In fact, measuring the amount of British legislation which originates from the EU is a difficult process as there are many competing methodologies, and there are problems with deciding on the relative importance of different pieces of legislation: "The Working Time Directive is arguably of far greater significance to the working population of the Member States than, for example, the Commission Regulation on 'the classification of padded waistcoats in the Combined Nomenclature'".[17]

However, the precise quantity of legislation emanating from Brussels ought not to be a concern from a democratic perspective, provided the legislative process is sufficiently democratic. This report goes on to examine the democratic performance of the legislative process (*see chapter 2*), and to recommend ways in which that performance can be improved. In a democracy, laws should be made with the consent of the people. And if Britain is to remain in the EU, citizens need to feel that their voices count in the legislative process.

Yet this is not just about Britain. EU citizens must all feel that their voice counts in the EU. As we can see from the Eurobarometer results above, it is clearly the case that those countries who have been 'bailed out' due to the recent Eurozone crisis feel even more left out than others. Rightly or wrongly, citizens of these countries feel that their voice does not count and that the EU has forced harsh austerity conditions upon them. The European Fiscal Compact, which entered into force on 1st January 2013, created new obligations to deal with budget deficits for Eurozone states, further blurring the distinction between national and European governance.

With the public feeling distant and disengaged from European affairs, and with serious questions to answer surrounding the democratic nature of the European legislation process, it is clear that a real democratic deficit exists. The question is: how do we tackle it? The rest of this paper seeks to answer this question within the context of the UK as an EU member, firstly through analysing the democratic performance of two of the three EU institutions, and then through examining some specific approaches to the problem – strengthening national parliaments, giving devolved institutions greater power, and providing more opportunities for citizens to have a direct involvement in European affairs.

17 See House of Commons library note *How much legislation comes from Europe?* 13/10/2010.

THE EUROPEAN PARLIAMENT

The EU institution formally charged with democratic representation is the European Parliament. It is the EU's only directly elected institution, and is composed of 766 MEPs (down to 751 after the 2014 European elections), elected every five years. Each state is assigned a certain number of seats, loosely tied to population, with smaller states overrepresented in order to provide them with appropriate levels of representativeness.

The European Parliament (EP) is the world's largest transnational parliament and has the second largest electorate (at almost half a billion) of any parliament in the world (with only India's electorate of 800 million being larger).

Turnouts for elections to the European Parliament have dropped in every single election

In the words of David Farrell: "For much of its life, the European Parliament could have been justly labelled a 'multi-lingual talking shop'. But this is no longer the case: the EP is now one of the most powerful legislatures in the world both in terms of its legislative and executive oversight powers."[18] Since Farrell said this in 2007, the EP has gained further powers under the Lisbon Treaty.

In recent years, the EP has been flexing its muscles. A combination of new Lisbon Treaty powers and enterprising MEPs has caused the influence of the EP to increase. It has been outspoken on the EU budget, and has driven certain EU policies such as a banker's bonus cap. According to Thomas Klau, of the European Council on Foreign
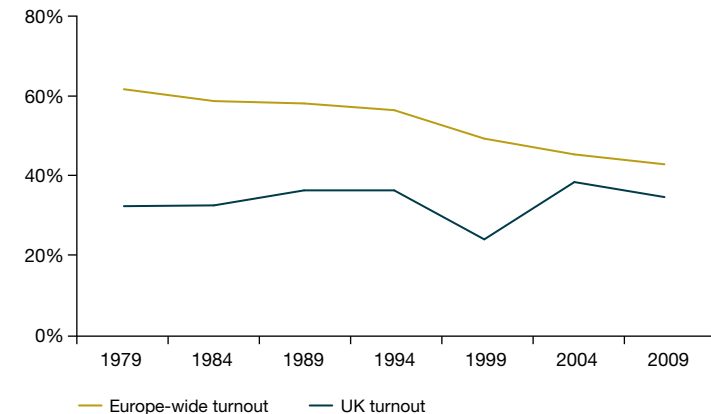
18 See www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRES S&reference=20070615IPR07837

Relations: "MEPs now wield far more individual power than their national counterparts".[19]

Yet just because a parliament is powerful, does not necessarily make it representative, accountable and, indeed, democratic.

Across the European Union, turnouts for elections to the European Parliament have dropped in every single election (*see Figure 5*). While it is true that this continuous fall in turnout has coincided with an increase in the number of member states, some of whom have dramatically lower turnouts in national elections as well, nevertheless turnout has tended to decrease across Europe.

FIGURE 5: TURNOUT IN EUROPEAN ELECTIONS

— Europe-wide turnout   — UK turnout

Turnouts have tended to be particularly low in the UK, bottoming out in 1999 at 23% (then a record low for a UK election until 2012's Police and Crime Commissioner elections). While this is, to a large extent, due to electoral fatigue (the 1999 election took place just a month after local elections) this still does not point towards an electorate that is engaged in European elections.

A January 2013 YouGov poll found that 95% of the British public could not name one of their MEPs.[20] This is an indicator of a general lack of engagement in European affairs when it comes to European

19 See www.ft.com/cms/s/0/04fdfa06-8291-11e2-a3e3-00144feabdc0. html#axzz2sYGIU8FD

20 See http://cdn.yougov.com/cumulus_uploads/document/50ri38jpjy/YG-Archive-results-090113-EU-Voting-Intention-Standard-Question.pdf

elections. It is a truism that EP elections are usually fought on national issues. They are classic 'second order' elections[21] in which governing parties are usually punished and smaller or fringe parties can often succeed.

Such low turnouts are indicators of the democratic deficit at work. Historically, the response to this deficit has been to increase the power of the EP. The parliament has gained huge amounts of powers in the 35 years since it was first directly elected. Nevertheless turnout has fallen at every election. Simply giving the EP more powers will clearly not increase its visibility or encourage more people towards democratic engagement.

Instead, we recommend four reforms to the workings of the EP which will increase its representativeness and accountability, and encourage more participation. The first reform is within the scope of the UK government; the second and third recommendations are aimed at British political parties; and the final proposal is the responsibility of the European Union itself.

The voting system

All member states are mandated to use proportional electoral systems. This means that in every state, votes count in proportion to their value and that in terms of parties the EP is very diverse.

Britain elects its MEPs by a closed-list proportional system. This means that parties provide a ranked list of candidates who are elected in order. Voters do not have the opportunity to vote for specific candidates, just for parties. Academic comparisons of turnout rates have shown that turnouts tend to be lower in countries with closed lists.[22] Most European countries allow voters to express a vote for an individual candidate. This changes the nature of European elections away from parties and towards an election in which the individual candidate becomes more prominent.

Despite the closed-list system in the UK, parties still run a variety of candidates who conform to a wide range of views. For instance, the Conservatives, in 2009, ran Edward McMillan-Scott

in Yorkshire and Humber. McMillan-Scott, who was unhappy with the Conservative party's Euroscepticism, eventually defected to the Liberal Democrats.[23] The Conservatives also ran Roger Helmer, who, believing that the Conservative Party was insufficiently Eurosceptic, eventually defected to UKIP.[24] A more candidate-centred system such as the Single Transferable Vote or an open-list system would make these differences clearer to the electorate, would promote candidates who are currently almost invisible in the campaign, and would allow for parties to broaden their appeal with candidates who can reach different parts of the electorate.

According to Simon Hix and Sara Hagemann, in countries that use open-list systems citizens are 20% more likely to be contacted by candidates or parties than those in states which use closed-list systems. They are 15% more likely to say that they feel well informed about the elections, and they are 10% more likely to turn out.[25]

Hix and Hagemann also find that moderately sized districts aid these attributes, with larger districts being susceptible to domination by a small number of nationally famous candidates. As such they recommend districts of between four and ten seats. As it so happens, this covers every UK constituency except Northern Ireland and North East England (both three seats), making the UK perfectly suited for the adoption of such a system.

The introduction of STV or an open-list system would change the nature of EP elections. Parties would need to promote individual candidates in order to garner votes, giving voters a clearer idea of who their representatives are. This would drive up interest and turnout. It would help to create EP election campaigns which are more interesting, more vibrant and closer to the issues at hand.
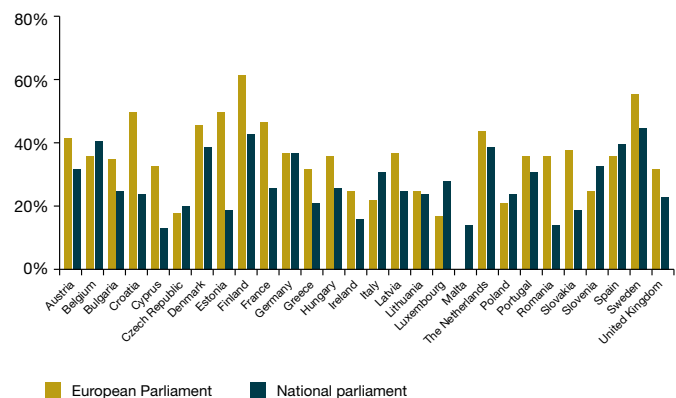
Recommendation 1: The introduction of a candidate-centred, proportional system should be adopted for UK elections to the European Parliament. We strongly advocate the Single Transferable Vote, but an open-list system would be an improvement on the current closed-list system.

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21 A description ascribed to European Parliamentary elections since at least 1980 by Karlheinz, Reif and Schmitt, Hermann, 'Nice second-order national elections – a conceptual framework for the analysis of European parliamentary elections' in *European Journal of Political Research* Volume 8, Issue 1, March 1980.

22 See for example, 'Why bother? Determinants of turnout in the European elections' by Mattila, Mikko, *Electoral Studies* Volume 22 2003 Pages 449–468.

23 See http://news.bbc.co.uk/1/hi/uk_politics/8564914.stm

24 See www.bbc.co.uk/news/uk-politics-17242953

25 *Could Changing the Electoral Rules Fix European Parliament Elections* by Simon Hix and Sara Hagemann (2009), available at: www.researchgate.net/publication/48910138_Could_changing_the_electoral_rules_fix_European_parliament_elections_/file/32bfe512e4585e2dfd.pdf

Legend: ■ European Parliament ■ National parliament

Representativeness

The European Parliament has a relatively good record on gender equality (*see Figure 6*). In only eight EU member states does the national parliament have a higher percentage of women represented than in the EP. In two of these (Luxembourg and Malta) the state only elects six MEPs, making comparisons more difficult, though Malta's record of no women MEPs is particularly disappointing. In one other country (Germany), the percentage is tied.

In some countries the gap is notably large. In Cyprus, Estonia, Hungary, Romania and Slovakia the percentage of women in the EP is more than double that of the national parliament. Finland and Sweden have an absolute majority of women MEPs, with Finland's 62% almost representing two thirds of their group. Croatia and Estonia's MEPs are gender balanced and Bulgaria, Denmark and the Netherlands all have MEP groups where the percentage of women MEPs exceeds 45%.

That said, it should be noted that gender representation is not

26 Percentages of women in EU Parliament sourced from 'Women in the European Parliament' available at http://www.europarl.europa.eu/RegData/publications/2011/0001/P7_PUB(2011)0001_EN.pdf and from European Parliament website. National parliament percentages sourced from ipu.org and based on lower houses in bicameral systems.

just a function of the EP itself. Political parties must run women in order for them to be represented. Clearly, therefore, political parties are doing relatively well at nominating women to run for office in the EP. Perhaps that is because it is in the interest of parties, under the proportional voting system used in European elections, to present a diverse list so as to appeal to larger portions of the electorate.

In Britain, 33% of MEPs are women (compared to 22% of MPs), and the overall makeup of the EP is 35% female. So despite the relative success in putting forward women, there is still some way to go before gender parity is reached. Parties should be looking for new methods and opportunities to increase the number of female candidates for the EP.

Recommendation 2: Political parties should seek to improve gender representation in the EP by increasing the number of female candidates they put forward for election in winnable positions.

A federalist bent

Another issue with the EP is its apparent ideological bent towards European federalism. "Its members, by nature, tend to be federalists who overwhelmingly favour 'more Europe' and closer integration as an answer to most policy questions."[27] Those who wish to run for it are generally those who have the most interest in European policy. By nature those people are more likely to be the most federalist members of their party.

For a 2002 report, Professor Simon Hix surveyed MEPs on their personal self-placement on a 'European integration' scale, between 1 (the most Eurosceptic position) and 10 (in favour of European federation). Members of the Party of European Socialists (PES) and the European People's Party, the two largest parties, mostly stated a value of over 5, with PES MEPs peaking at around 7. While comparable data for the public at large does not exist, we know from survey data that the majority of EU citizens would be unlikely to see themselves as equally pro-European as their representatives.

While the EP represents parties and gender relatively well, it is perhaps less good at representing the median of European public opinion, with the bulk of the Parliament being made up of the most federalist members of their parties, and a minority now extremely

27 www.ft.com/cms/s/0/04fdfa06-8291-11e2-a3e3-00144feabdc0.html#axzz2sYGIU8FD

Eurosceptic. While these two groups deserve representation, this does not seem to represent the median view of Europeans.

Recommendation 3: Parties should attempt to recruit candidates with a wider range of views on Europe. EU policy affects agriculture, trade and almost every other area of British public life, and this should be emphasised when recruiting candidates.

A frequent complaint about the Parliament is the periodic decampment to Strasbourg to vote on legislation. This is due to the EU treaties which state that Strasbourg is the official seat of the EP and therefore where the Parliament must vote on legislation. The financial and environmental costs of the EP moving to Strasbourg are significant – €180m a year, and 19,000 tonnes of CO2. Yet less attention has been paid to the democratic costs. Moving the EP sacrifices transparency, as Brussels correspondents must choose between heading to Strasbourg for the week and staying in Brussels where, with the Commission based nearby, another EU story may break. This decision becomes harder as news organisations have been decreasing their number of correspondents in Brussels for some time.[28] The additional travel time can also sap time from MEPs, their assistants and other individuals who travel to Strasbourg, which could be better spent representing their electorates.

Recommendation 4: The periodic decampment of the European Parliament to Strasbourg should end.

3 THE EUROPEAN COMMISSION

The Commission is the executive arm of the EU and is often viewed as the civil service. At its head are the 28 European Commissioners, appointed by the governments of the member states of the EU. These act almost like a cabinet, with each Commissioner holding a certain brief. The Commission is headed by the President of the Commission and the Vice-Presidents. The term 'Commission' in reality refers to two things: the members of the Commission itself, but then also the staff and institutions which run the EU. The Commission proposes EU legislation, manages and implements EU budgets and policies and enforces EU decisions. The Commission is meant to maintain independence and to represent European interests.

Yet the mechanism for appointing the Commission runs directly counter to this. Commissioners are appointed by the governments of the 28 member states, prospective Commissioners are interviewed by the European Parliament (EP) and the EP can then vote confidence in the whole Commission. Governments typically appoint prominent politicians into the role of Commissioner. Of the current Commissioners, 19 are former ministers and a further six were prominent politicians of other types.

The Commission has something of an identity crisis. Political scientist Thomas Christiansen claims that the institution suffers from being neither clearly in a bureaucratic mode of rule nor a political bargaining mode, and that it is neither completely democratically accountable, nor completely accountable to diplomatic relations.[29] It must apply, interpret and implement EU budgets and policies whilst also having an important and powerful role in the

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28 See http://socialeuropeanjournalism.com/2011/02/25/why-do-they-leave-brussels-2/

29 See Christiansen, Thomas 'Tensions of European Governance: politicized bureaucracy and multiple accountability in the European Commission' *Journal of European Public Policy* Volume 4, Issue 1, 1997.

drafting of new ones. As put by Charles Grant of the Centre for European Reform: "There has always been some ambiguity over the Commission's various and contradictory roles: it is a political body that initiates legislation and also brokers compromises among the member states; a technical body that evaluates the performance of the member states' economies; a quasi-judicial authority that polices markets and enforces rules; and a negotiator of common policies on behalf of the member states."[30]

Officially Commissioners are supposed to represent the whole of Europe, but the appointing of one Commissioner by each member state creates an impression that each member state has 'their' Commissioner. Indeed, in the 2008 referendum on the Lisbon Treaty in Ireland, the Irish were promised by the European Council that they would keep 'their' Commissioner in a post-Lisbon EU.[31] This can only further encourage the view that each country has its own Commissioner.

Christiansen notes that it can sometimes be difficult to tell which part of the Commission a proposal has come from – the politicised Commissioners or the bureaucracy. Whereas in domestic systems there is a distinction between statutory measures, cabinet decisions and legislation – making it clear where in the system the decision originated from – EU 'regulations', 'directives' and 'decisions' do not provide the same kind of clarity.

Treating the Commission as a representative of national interests is arguably a sign of representativeness. But the channels of representation are so byzantine as to undermine this claim. In the UK for instance, the people elect a parliament, which in turn provides a government, which then selects a Commissioner through a process of negotiation with other European countries. This process lacks transparency, and the final outcome – an EU Commission – appears fairly distant from the original intentions of British voters in general elections. The EP has a significant democratic role to play in holding the Commission to account, as we explore below. But the whole process opens up a significant gap between the Commission and the people, and seriously obscures channels of accountability.

30 From *How to build a modern European Union*, Charles Grant available at www.cer.org.uk/sites/default/files/publications/attachments/pdf/2013/rp_119-7927.pdf

31 See http://www.europeanvoice.com/article/imported/one-commissioner-per-country-is-an-error-eu-will-regret/73728.aspx

Our two recommendations for improving the democratic performance of the Commission seek to close that gap, bringing the appointment and workings of the Commission closer to the European people.

Shrink it down to size

A common complaint is that the Commission has grown too large. The Lisbon Treaty actually declared that the Commission should be reduced in size by one third. The bargain with the Irish electorate to secure ratification of the Lisbon Treaty led to that part of the Treaty being side-stepped – after all, if the Irish must always have a Commissioner, why shouldn't this apply to the other 27 member states?

The former European Commissioner Frits Bolkestein has claimed that the Commission is too large: "The Commission meddles too much in business that the member states can regulate themselves. The background of that is the large number of Commissioners in the union. Most of these managers have too little to do, and unintentionally end up making policy."[32] The size of the Commission therefore undermines the EU's commitment to the democratic principle of subsidiarity. If Commissioners, in a search for things to do, are creating too much legislation, it impacts on the democratic rights of the nation states.

The Centre for European Reform (CER) has also argued for a cut in the number of Commissioners, but has proposed that, as a temporary measure, the next Commission be divided into 'senior' and 'junior' Commissioners. The CER argues that the size of the Commission makes substantive discussion difficult, and that this has encouraged the current President, Jose Barroso, to institute a top-down regime which discourages debate, innovation and reform.[33] This leaves the Commission sometimes behaving more like an intergovernmental institution.

Recommendation 5: In the long term the Commission should shrink in size. In the short term the next Commission should aim to divide Commissioners into 'seniors' and 'juniors'.

32 Quoted from www.theinternationalcorrespondent.org/euro-critic-frits-bolkestein

33 *How to build a modern European Union*, Charles Grant available at www.cer.org.uk/sites/default/files/publications/attachments/pdf/2013/rp_119-7927.pdf

Electing a President

The Commission is formally accountable to the European Council and to the European Parliament (EP). These two institutions represent the member states of the EU and the European people, respectively. The EP has several mechanisms for holding the Commission to account.

When a new Commission is appointed the EP holds hearings for each appointed Commissioner to investigate their suitability for the role. The EP can demand the Commission's resignation at any moment and Commissioners attend sessions of Parliament and meetings of the committees.

The appointment of the Commission is currently a byzantine process. It was formerly a purely intergovernmental affair, with each government holding a veto over the appointment of Commissioners. But the EP has seen its role in the process increase since the introduction of the Maastricht Treaty in 1992, which gave the EP a vote of confidence in both the President of the Commission and the whole Commission itself. The Nice Treaty of 2003 removed the capability of national governments to veto a Commission, with votes held by qualified majority voting.

The newly empowered EP demonstrated that this was not just for show in 1999, when the Party of European Socialists withdrew its support for the Santer Commission, ending in its resignation.

The Lisbon Treaty changed the formula once again. The Treaty states that the President of the Commission is elected: "Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members."[34]

This year's European election is the first since the Lisbon Treaty was ratified. The European political parties have interpreted the treaty to mean that that the largest European political party will provide the President of the Commission. They have therefore nom-inated party candidates for the role. This has come to be known as the 'candidate model'.

34 Consolidated version of the Treaty of the Euroean Union, Article 17, Paragraph 7. Available here: http://eur-lex.europa.eu/LexUriServ/LexUriServ. do?uri=OJ:C:2010:083:0013:0046:en:PDF

The parties hope that their nomination of candidates for the role of the President of the Commission will achieve transparency and will help to 'Europeanise' the election by offering European figure-heads with which the public can familiarise themselves. There will be a televised debate between the candidates on 14th May, shortly before the election.

Ultimately, voters do not have a direct vote for the presidential candidates in question

This process for 'electing' of the Commission President has several problems, however.

Ultimately, voters do not have a direct vote for the presidential candidates in question. They are voting for national political parties, which affiliate to pan-European political parties headed by candidates for President. So, for instance, a Labour voter in Britain does not vote for Martin Schulz, the candidate of the Socialists and Democrats (S&D) group in the European Parliament, or even for the S&D but rather for the Labour party. This relatively complex set-up is not altogether transparent. The Labour party is not featuring Schulz in its election leaflets or party broadcasts. Indeed, Labour has refused to endorse Schulz, on the basis that he is too federalist.[35] If the S&D win the Europe-wide election by a margin thinner than UK Labour's number of seats, can it truly be said that Schulz has 'won' if that plurality is dependent upon Labour support? Similarly, those who vote Conservative in the 2014 elections in Britain will be effectively disenfranchised from the presidential aspect of the contest. This is because the Conservatives are members of the European Conservatives and Reformists party, who are not putting up a presidential candidate.

Additionally, national parties affiliate to European political parties *after* an EP election. While most are affiliated to a party already, many will change group, form new groups or, in the case of new parties, join a new group altogether. What happens if a European political party gains a plurality of seats based on the post-election affiliation of a new party, or because of the loss of a former party to another group? Here the links are even less clear.

35 www.theguardian.com/world/2014/mar/01/labour-european-commission-president-martin-schulz

European political parties lack affiliates in all member states as well. For instance, British voters are currently unable to vote, as it were, for the European People's Party.

A revealing statistic can be found in a recent poll by the German pollster Intratest Dimap. Asked whom they would prefer to be European Commission President, 36% of Germans support the S&D nominee, Martin Schulz, member of the German Social Democratic Party and current President of the European Parliament.[36] Some 30% of respondents support the election of former Luxembourgish Prime Minister Jean-Claude Juncker, who is the presumptive nominee of the European People's Party, with 20% supporting neither.

Yet the same poll showed 39% of voters backing the Christian Democratic Union, and its sister party the Christian Social Union, which are affiliated to the European People's Party and therefore officially backing Juncker, whereas 29% backed the Social Democratic Party of Schulz himself. This does not suggest that the majority of German voters are treating the contest as a chance to choose a Commission President. Notably, support in national polls does not differ too much from the European Parliamentary figures, with an Intratest Dimap poll the same month showing the CDU/CSU on 41% to 27% for the SPD. So there is little evidence that the German campaign has been 'Europeanised' by this process.

An additional problem lies in the possibility of an inconclusive result, leading to negotiations and arguments which lack transparency. A dead heat could serve to make the democratic credentials of the 'candidate model' even more questionable. This danger is very real – the latest projection of the election result by Pollwatch2014 (at the time of writing) shows a draw between the S&D and the European People's Party at 212 seats apiece.[37]

Earlier this year, *The Economist* recommended that none of the candidates for Commission President be selected, suggesting that the European Council overrule the EP. Their concern is that the 'election' could mean "not just ending up with the wrong person, but also making the Commission even more beholden to the Parliament".[38] While *The Economist* is perhaps right to say that "most

European voters neither know nor care who any of these people are or what they stand for", their suggestion could seriously undermine European democracy. To ignore the EP's wishes after the election could send a signal that the EU is not capable of living up to its own rhetoric on democracy. The Commission 'candidate model' would be exposed as a failure, and this could have the effect of making trust in the EU deteriorate further. It could harm the credibility of the Commission, the Parliament and European elections themselves.

Clearly, there are serious problems with the 'candidate model' of electing a President through party nominations. The 'contest' does not appear to engage European citizens, and the result may not really reflect their wishes. However, two wrongs do not make a right. If the Council over-rules the process, it would make a mockery of European democracy. There is a real need to clean up the process of electing the President, and to agree on clearer rules for the 2019 election.

Recommendation 6: The European Council should accede to the 'candidate model' for the 2014 election but should negotiate with European political parties on a clearer set of rules for future elections.

Why not directly elect?

The most obvious way of making the Commission more accountable is to make the President directly elected by the people of Europe. In recent years, direct election has been publicly supported by Wolfgang Schäuble, the German finance minister, and has previously been supported by his party, the Christian Democratic Union.[39]

Direct election may provide the Commission President with more legitimacy, and galvanise the public in a European election campaign, but it would also be likely to produce centralisation of power into one person's hands and to have other anti-democratic side-effects.

The European population consists of more than half a billion people spread across 28 member states with 24 official languages. Campaigning across such an environment would be exceedingly difficult. It would be necessary to make sure that the elected

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36 Poll available at www.infratest-dimap.de/umfragen-analysen/bundesweit/ europatrend/2014/februar/ (In German)

37 See www.pollwatch2014.eu

38 See www.economist.com/news/leaders/21595904-if-ever-europe-needed-

competent-reformer-new-ideas-it-now-lagarde-president

39 See www.euractiv.com/future-eu/germanys-schaeuble-calls-directl-news-512823

candidate has appropriate support from across the geographic spread of the EU. An elected Commission President who does not have such widespread support could face a splintering or divided union.

> We cannot impose traditional, nation-based models of democracy (such as direct election of a President) on a unique supranational entity

Naturally, therefore, candidates for the Presidency would need to demonstrate support across the EU. They would need to be nominated in multiple countries. The difficulty is that voters may not vote for candidates based on their ideological support but on national recognition. And smaller countries could be left out of the contest. Above all, Europe is a vast, complex and multilingual society. We cannot simply impose traditional, nation-based models of democracy (such as direct election of a President) on a unique supranational entity. For that reason, direct election of the Commission Presidency is not the way to go.

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EMPOWERING NATIONAL PARLIAMENTS

Many commentators – whether Eurosceptic[40] or pro-European[41] – have come to see the future of European democratic reform in the role of national parliaments. Often the first place voters look to for democratic accountability is their own national parliament. MPs are more prominent than MEPs. Parliaments are also more representative than governments, even if the latter is drawn from the former. And as chambers for debate, parliaments are transparent arenas for scrutinising national policy.

Yet we should not pretend national parliaments are perfect. Democratic deficits exist at the national level in almost every European country. Turnouts are decreasing across Europe in national as well as European elections, and citizens feel increasingly distant from their own governments and parliaments as well as that of the EU. A more democratic Europe is therefore dependent upon more democratic nation states. If parliaments are to better scrutinise Brussels then they must also become more democratic. A Westminster-style parliament with strong executive control is clearly going to be more easily cowed by the executive on European and other issues.

Nevertheless, national parliaments offer a clear and comprehensible route towards improving the democratic performance of the European Union. There are two elements to scrutiny of the EU by national parliaments. Firstly, ever since the Lisbon Treaty, national parliaments now have official recognition as an element of EU decision-making. Secondly, European law is made in Brussels but

40 http://blogs.lse.ac.uk/europpblog/2013/11/18/five-minutes-with-mats-persson-national-parliaments-are-the-solution-to-the-eus-democratic-deficit/

41 www.cer.org.uk/sites/default/files/publications/attachments/pdf/2013/rp_119-7927.pdf

is implemented in member states, and this process is scrutinised in most member states by committees. Our two recommendations fall under these two categories of scrutiny.

Which colour card?

Since 2006 the European Commission has been sending all national parliaments all legislative proposals. The Lisbon Treaty creates a new role for national parliaments as guarantors of the concept of subsidiarity. Legislation is now sent to national parliaments at the same time as it is sent to the European Parliament and the Council of Ministers. Any national parliament may then give a 'reasoned opinion' – ie an expression of disapproval – if it considers that the proposal violates the principle of subsidiarity.

National parliaments have eight weeks to submit such an opinion, and if a third of parliaments issue one then a 'yellow card' is issued. In such a case the Commission has to review the proposal with a view to maintain, amend or withdraw it. If half of national parliaments submit an opinion and the Commission decides to maintain the proposal then it must submit a reasoned opinion of its own to the European Council and the Parliament, each of which can strike down the proposal. If the Commission proposes the law again, half the national parliaments can block the proposal – this is called the 'orange card'.

In reality, the system has proven to be rather unwieldy. In 2012 (the most recent year for which data is available) national parliaments submitted 663 opinions, of which 70 were 'reasoned opinions'. In that period one 'yellow card' was issued, and this was the first ever.[42] Since 2012, only one further yellow card has been issued, though at least two legislative proposals have been with-drawn due to the threat of the yellow card.[43]

The large number of reasoned opinions issued without a yellow card demonstrates the difficulty in achieving consensus amongst member state parliaments, and there is a perception that the parliaments do not communicate well between themselves. This is important because "the more parliaments co-operate, the more

they can accumulate countervailing forces against the transfer of powers to the European level. As the new mechanism does not lead into a blockade of integration but in political deliberation on issued opinions, it is likely that a more problem-oriented, flexible balance of power is achieved in the federal order of the EU."[44]

Strong collaboration between parliaments is therefore vital for the yellow card system to become a powerful, deliberative and constructive addition to EU decision-making processes.

The second yellow card ever issued was against the Commission's proposal for a European Public Prosecutor's Office to investigate fraud against the EU budget. Some 14 parliamentary chambers in 11 member states issued reasoned opinions. MPs expressed concerns about the new office, claiming that existing national prosecutors and European agencies could cover the work.

This yellow card was subsequently rejected by the European Commission and they decided to 'maintain' the policy.[45] Previously yellow cards had been treated as a virtual veto, with the Commission withdrawing the Monti II legislation on the right to strike after the first use of the yellow card, and seeking to prevent yellow cards by modifying a 2012 directive on public procurement, as well as a directive on pensions.[46]

The Commission's insistence on maintaining the Public Prosecutor legislation therefore changed the nature of the yellow card system, setting a precedent for the Commission over-ruling the system. This could undermine the system in the future and make national parliaments more reluctant to go through the work of creating reasoned opinions, especially as so many fail to create the groundswell necessary for a yellow card.

The hunger for more power for national parliaments has not been satisfied by yellow cards alone. There have been calls for the consultation period for national parliaments to be extended from eight weeks to 12 weeks. As well as giving parliaments more time to respond, increased time could allow for some limited consulta-tion with domestic civil society.

42 Stats from European Commission's 2012 annual report on relations between the European Commission and national parliaments available here: http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/docs/ar_2012_en.pdf

43 www.cer.org.uk/insights/eus-yellow-card-comes-age-subsidiarity-unbound

44 Prof. Arthur Benz *Linking multiple demoi. Inter-parliamentary relations in the EU*, 2011, available at http://deposit.fernuni-hagen.de/2856/1/benziev-online2011nr1.pdf

45 See Commission decision here: http://ec.europa.eu/commission_2010-2014/sefcovic/documents/2013_11_27_com851_public_prosecutor_en.pdf

46 www.cer.org.uk/insights/eus-yellow-card-comes-age-subsidiarity-unbound

Similarly there have been calls by some – including William Hague[47] – for a 'red card' to be created, which would allow parliaments to veto European policies directly. Half of national parliaments providing a 'reasoned opinion' would seem an appropriate threshold for such a policy. Such a reform would not necessarily need treaty changes. A *de facto* red card system could be created by the Commission simply agreeing to treat such a threshold as an automatic veto, just as the Commission began accepting reasoned opinions prior to the Lisbon Treaty.

Perhaps most radically, The Dutch House of Representatives has suggested the creation of a 'green card', which would allow national parliaments to come together to ask for the creation of new legislation, or the repeal of old legislation.[48] At a time when the Commission, Council, EP and citizens (through the European Citizen Initiative) have the capability to propose EU legislation, this seems a fair addition.

Recommendation 7: The adoption of 'green cards' should be a long-term priority. Red cards should also be adopted, though for the time being the Commission should create an informal agreement to treat a certain number of reasoned opinions as a *de facto* red card. Increase the amount of time for a reasoned opinion to be issued to 12 weeks.

Domestic scrutiny

The second aspect of the power of national parliaments in the EU structure comes in the form of domestic scrutiny. European member states' parliaments have European affairs committees which scrutinise the EU, evaluate its policies and hold governments to account in their dealings with the European Council and the Council of Ministers.

Different EU member states have, naturally, set up different rules for their committees and for EU scrutiny in general. Britain's scrutiny is principally focused in the House of Commons European Scrutiny Committee and the House of Lords EU Select Committee.

A 2013 study on scrutiny of the European Council by the EU's Directorate-General for Internal Policies described Britain's system as a 'government accountability system', in which scrutiny of the EU is relatively developed *ex-post*, but undeveloped *post-ante*.[49] For instance, there are few debates on European Council decisions before summits. Instead there are plenary sessions of the whole national parliament after the summit. These provide opportunities for the opposition to voice concerns, but there are fewer opportunities to affect government policy, as it happens after the fact.

The report's authors conclude that Denmark's system, which they dub 'Full Europeanisation', provides the largest amount of scrutiny and accountability. In the Danish model, government stances at the Council are scrutinised both before and after summits, and both in committee and in plenary meetings of the whole parliament, providing both the expertise of committee and the public questioning of plenary.

The Danish European Affairs Committee has long been seen as Europe's strongest committee. The key function of the Danish committee as opposed to other committees is its 'mandate' system, in which ministers must provide an oral description of the Council agenda and the government's negotiating position to the Committee. The Committee is then asked to provide approval for the government stance. Committee members then deliberate over the negotiating position, and the Chair closes the meeting when he or she feels that members of the committee representing parties which hold a majority of seats in the Parliament do not oppose the proposed negotiating position. If a consensus cannot be found, the Committee can reject the ministers' mandate and they will have to return at a later date (though in practice this rarely happens). A written report is then produced detailing the Committee's position and the leading minister's discretion to deviate from this position.[50]

Once a Council meeting is over, the responsible minister must submit a report to the Committee in which they summarise the meeting proceedings. If the Committee is unsatisfied with the

47 See www.bbc.co.uk/news/world-europe-22730226

48 See Tweede Kamer report *Democratic Legitimacy in the EU and the role of national parliaments* www.tweedekamer.nl/images/Position_paper_Dutch_House_of_Representatives_on_democratic_legitimacy_in_the_EU_final_181-236782.pdf

49 *Democratic Control in the Member States of the European Council and the Euro zone summits* available at www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET(2013)474392_EN.pdf

50 Work of the Danish European Affairs Committee detailed here: http://aei.pitt.edu/33634/1/pw_127.pdf and www.eu-oplysningen.dk/upload/application/pdf/77305369/euo_europaudvalg_jan2012_uk_web.pdf%3Fdownload%3D1

report then they can initiate further scrutiny measures such as demanding a plenary discussion, or further questioning. However, the follow-up is rarely used. This model of scrutiny allows parliament to hold the government fully to account regarding its dealings with other European states.

Recommendation 8: The UK Parliament should be able to scrutinise the Government's negotiating position before European Council meetings as well as after.

Scrutiny of European policy also involves other committees in Denmark, so that each European policy areas is analysed by the appropriate committee. Agricultural policy goes to the Agriculture Committee, health policy to the Health Committee, and so on. This is known as 'mainstreaming'.

Since 2011 the committee structure in Ireland has been 'mainstreamed'. Detailed consideration of EU draft legislation and other policy documents was devolved to the relevant sectoral committees. This allowed for Ireland's expert legislators to scrutinise EU proposals relating to their sector. Mainstreaming has also allowed the Oireacthtas European Affairs Committee to have a more targeted role.[51]

The UK's European Scrutiny Committee was described by Chris Heaton-Harris, a member of the Committee, at a recent OpenEurope conference as a committee that one is "put on" rather than one chooses to be on, as the level of work is so large-scale. According to the European Scrutiny Committee around 1,000 documents are deposited in the UK Parliament every year.[52] A more mainstreamed system may make the work of the European Scrutiny Committee less strenuous and allow it to dedicate itself to new forms of scrutiny.

In addition, the hiving off of 'European' issues into a single committee treats EU policy as if it is a specialised branch of foreign policy, when in reality it touches on all types of policy.

51 See written evidence to House of Lords European Scrutiny inquiry, p7: www.parliament.uk/documents/lords-committees/eu-select/Role%20of%20national%20parliaments/nationalparliamentsevidence.pdf

52 See p23 of the European Scrutiny Committee's report on reforming the system of Scrutiny, available at: www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/109/109.pdf

Recommendation 9: The UK Parliament should 'mainstream' European policies by sending European legislation to the appropriate committee depending on the policy area.

In the UK the House of Lords is often said to provide exemplary scrutiny of the EU. With six sub-committees covering various aspects of EU policy it is no wonder why. It is also the case that the Lords has no single-party majority, and this is an important component in its ability to scrutinise.

It is also ironic that the part of the British Parliament which provides the greatest scrutiny of the European Union (ie the House of Lords) is itself unelected and unaccountable. Due to this it is also much less visible. Many of the critiques that can be levelled at the EU can also be levelled at Britain's upper house – it is unelected, unaccountable and unrepresentative.

One of the important aspects of the more effective committees is that they exist in systems which rarely have single-party majorities. Hence, it is more difficult for parties to control them through whipping. Indeed, in the Danish example given above, the mandate system was invented precisely because Denmark has a political system where minority governments dominate. Hence the mandate system was invented precisely to make sure that a majority of the legislature stood behind the government's negotiating position.

Richard Mulgan has noted that the Australian Senate is a successful 'House of Review' not because of its institutions but because of its anti-government majority. A more pluralistic house makes it more difficult for the government to control the Senate's committees.[53] Similarly, the fact that Britain currently has a hung parliament has helped to strengthen Select Committees, as whipping them has become harder. While the Lords, with its six sub-committees on European Union issues, may provide good scrutiny, its unelected nature means that the committee lacks representativeness and accountability. The most effective committees must naturally represent a plurality of views and a spectrum of opinion, to provide the best scrutiny.

It cannot be ignored that national parliaments are, on the whole, also suffering from markedly declining electoral turnouts and legitimacy throughout Europe. While they maintain higher turnouts

53 Mulgan, Richard *The Australian Senate as a 'House of Review'* Australian Journal of Political Science Vol 31, Issue 2, 1996.

and legitimacy than the European Parliament they must also reform themselves in order to increase their own legitimacy.

We advocate a wide range of constitutional and political reforms at the domestic level which, if taken as a package, would go some way towards addressing voter disengagement and improving the legitimacy of our parliament. These include introducing a proportional voting system, electing the second chamber and getting big money out of politics by cleaning up party funding.

For a truly strong role for parliaments there must therefore be reform of EU structures, reform of the processes of parliament with regards to the EU and a reform of parliaments themselves.

Leading the way

Stronger national parliaments can help deal with many of the democratic deficits in the European Union. By better holding the diplomatic portion of the EU to account, national parliaments can democratise the behaviour of ministers at the Council. And national parliaments can provide a 'third house' of the European structure, strengthening the principle of subsidiarity. The former European Commission President, Jacques Delors, once jokingly offered a prize to anyone who could define subsidiarity in less than a page. Allowing national parliaments to define where those limits lie could provide the solution to that problem.

> National parliaments are not a silver bullet for solving the democratic deficit. Reform of parliaments' role must happen alongside reform of the European Parliament

By coming together and agreeing a shared set of goals, national parliaments could strengthen their hand and become crucial guarantors of their citizens' democratic rights. Institutions exist for the collaboration of national parliaments, most notably COSAC (the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union). But these do not appear to have achieved the kind of collaboration necessary for effective scrutiny of EU affairs by national parliaments. Charles Grant, head of the Centre for European Reform, has suggested a forum of national parliamentarians should be created in Brussels.

But a larger, more attention-grabbing intervention may be necessary. Westminster could lead the way by organising a Speaker's Conference on the role of national parliaments in European democracy. This could be the precursor to an international conference of parliaments around Europe, where scrutiny procedures are shared and common standards are agreed.

Recommendation 10: Westminster should organise a Speaker's Conference on strengthening Parliament's role in EU democracy, with a view to taking proposals forward to a pan-European conference of parliaments

Yet national parliaments are not a silver bullet for solving the democratic deficit. Reform of parliaments' role must work alongside reform of the European Parliament and the other European institutions. The work involved in scrutinising an institution the size of the EU is extensive, and beyond the scope of national parliaments alone.

5 DEVOLUTION AND DIRECT PARTICIPATION

Our final two recommendations for closing the gap between the EU and the European people involve devolving power – both to existing devolved institutions and to people themselves.

The Bridgend Question

The devolved institutions have their own scrutiny mechanisms for the EU. In Scotland, for instance, there is a dedicated European and External Affairs Committee, although there is an element of 'mainstreaming' (*see p38*), with debates on EU legislation held in the appropriate subject committee and in the whole chamber.

Sub-national levels of government are also represented in Brussels through the Committee of the Regions, an advisory body made up of representatives from local and regional governments. The UK delegation includes two members of the London Assembly, National Assembly of Wales, Scottish Parliament and Northern Irish Assembly, and also includes two alternates from the Scottish Parliament. The devolved institutions also have offices in Brussels so as to maintain lobbying activities.

It is therefore not true to say that devolved institutions have no sway over EU legislation. However, there still remain clear democratic gaps, and too often the process depends on the good will of UK ministers.

The Welsh First Minister outlined what he described as the 'Bridgend Question' (to go alongside the West Lothian Question) in a speech in 2012.[54] The question notes that at the Council of Ministers, the UK is represented on agricultural and fisheries issues, for instance, by the UK minister for the Department of

Environment, Food and Rural Affairs. Yet these are devolved issues which often have a greater effect in devolved areas (for example, Scotland has 59% of the UK's coastline). However, the UK minister negotiates on behalf of the whole of Britain, regardless of the three other agriculture ministers in Holyrood, Stormont and Cardiff Bay. It is therefore possible for a UK minister to negotiate policy in Brussels with no reference to devolved nations or regions.

We need better consultation and stronger inter-governmental arrangements within the UK. As with the UK Parliament, there could be a requirement for UK ministers to present the agenda of Council meetings to the relevant devolved committees, with the committee able to call the minister in question before them if it has any objections to the UK position. In the age of video conferencing this need not mean long journeys to Edinburgh or Belfast. Such question-and-answer suggestions would have to be non-binding, but could provide for a healthy exchange of views between devolved institutions and the UK government.

> We need better consultation and stronger inter-governmental arrangements within the UK

At the European Council meetings, a distinction can be made between occupying the chair, which is the purview of UK ministers, and participation at meetings, where devolved ministers can have a more active role as appropriate. In some federal states in Europe, such as Germany and Belgium, rights of participation are written into the constitution. Having such a right would give devolved administrations a stronger position.[55]

Recommendation 11: Give devolved parliaments and assemblies the right to hold UK ministers to account on pressing issues at EU negotiations, and devolved ministers the right to participate in Council meetings as appropriate.

54 Speech transcript available at: www.clickonwales.org/2012/04/wales-and-the-future-of-the-united-kingdom

55 Prof M Keating, cited in National Assembly for Wales' Constitutional and Legislative Affairs Committee report *Wales' Role in the EU Decision-Making Process*, p20, available at: www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/cr-ld9674-e.pdf?langoption=3&ttl=CR-LD9674%20-%20Constitutional%20and%20Legislative%20Affairs%20Committee%20-%20Wales%26%238217%3B%20role%20in%20the%20EU%20decision-making%20process%20March%202014

Power to the people

The problem with parliaments, of course, is that they are not necessarily representative of the views of the general public themselves. Indeed, no parliament could ever hope to exactly replicate the views of the entire public, hence why we have representatives rather than delegates.

The Lisbon Treaty created the first direct citizen involvement in EU law-making by giving European citizens the capability to come together to propose legislation. The European Citizens Initiative allows for citizens to propose EU policies. If proposals get more than one million signatures across the EU, with significant numbers of signatures in seven of the EU's 28 member states, then it goes to the Commission. Unfortunately the process for an Initiative is very complex, with ten steps that may take up to 21 months to complete. At the time of writing there are only seven open initiatives and only two initiatives have reached the threshold necessary to initiate the legislative process.[56] These are a 'Right to Water' initiative and a pro-life campaign called 'One of Us'.

An alternative process for engaging EU citizens in EU legislative processes is the use of 'publics' in policy formation. Publics are spheres of deliberative policymaking which involve citizens directly.

Tools such as citizen juries (with around 12–24 members) and citizen assemblies (with closer to 100 members) allow for institutionalised forms of deliberative democracy, involving a representative sample of citizens (which could be taken from the electoral roll as with judicial juries). While such participative democratic institutions have not been tried in the EU proper, NGOs such as European Alternatives have used such techniques in their work. Citizen juries have been used by both local and national government in the UK.[57] Citizen assemblies have been used in British Columbia, Ontario and Canada on electoral reform issues.

Such participatory mechanisms work by taking a representative sample of citizens, informing them of the issues at hand (perhaps with a series of presentations) and then allowing them to discuss

and deliberate on the issues, in an attempt to come to a consensus. Such mechanisms can help to instil trust in a decision by demonstrating that a group of citizens, rather than elites, have reached their own conclusions.

Such deliberative mechanisms could be deployed to investigate particularly salient or controversial EU issues (such as the negotiation of new treaties) on the request of national parliaments or governments. The use of deliberative tools in this area could be easily piloted. Initially such mechanisms could be non-binding, though certainly there would be a moral imperative to follow the conclusions of a jury or assembly.

Recommendation 12: Deliberative mechanisms should be put in place – at both the European and UK level – for giving citizens a direct say in the shaping of European legislation.

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56 Data taken from ECI website at http://ec.europa.eu/citizens-initiative/public/welcome

57 For a summation of Citizens' Juries work up until 2007, see the House of Commons library note here: www.parliament.uk/documents/commons/lib/research/briefings/snpc-04546.pdf

CONCLUSION: CLOSE THE GAP

The democratic deficit is a complex problem requiring action at many different levels. This report has suggested 12 different methods for closing the gap between the EU and its citizens. While some of these are under the purview of political parties and the UK government, others are the responsibility of the European institutions themselves. But this should not prevent British parties from pursuing these reforms – indeed, they could be included in any renegotiations which take place over Britain's membership of the European Union.

Towards demoicracy?

Ultimately, any such effort has to be embedded in a clear vision of what a good European democracy looks like. But it is no good just taking the standard nation-based model of representative democracy and applying it to the unique contours of European governance.

Academics such as Cheneval and Schimmelfennig have recently claimed that the EU needs to be held to a different standard than the nation state – they argue that the EU is a 'demoicracy', not a democracy. The term democracy comes from the Greek word for the public. Cheneval and Schimmelfennig contend that the EU does not have a single *demos*, but multiple *demoi*, the plural form of the word.[58]

'Demoicracy' explicitly recognises that the EU lacks a coherent, unified 'people', and should therefore encourage the participation of separate 'peoples' within the European structure. A cosmopolitan multi-level polity could therefore emerge based on inputs at multiple levels – Europe-wide, national, sub-national and public. A more representative European Parliament and stronger, more

58 See www.jeanmonnetprogram.org/activities/enl/documents/ ChenevalSchimmelfennig2012.pdf

representative, national parliaments could together produce a more democratic Europe.

This is precisely what our 12 recommendations are designed to achieve. Together, they strengthen and make more transparent the UK Parliament's scrutiny and influence over European affairs; they make European structures more open to national influence; and they give citizens a more direct involvement in EU policymaking.
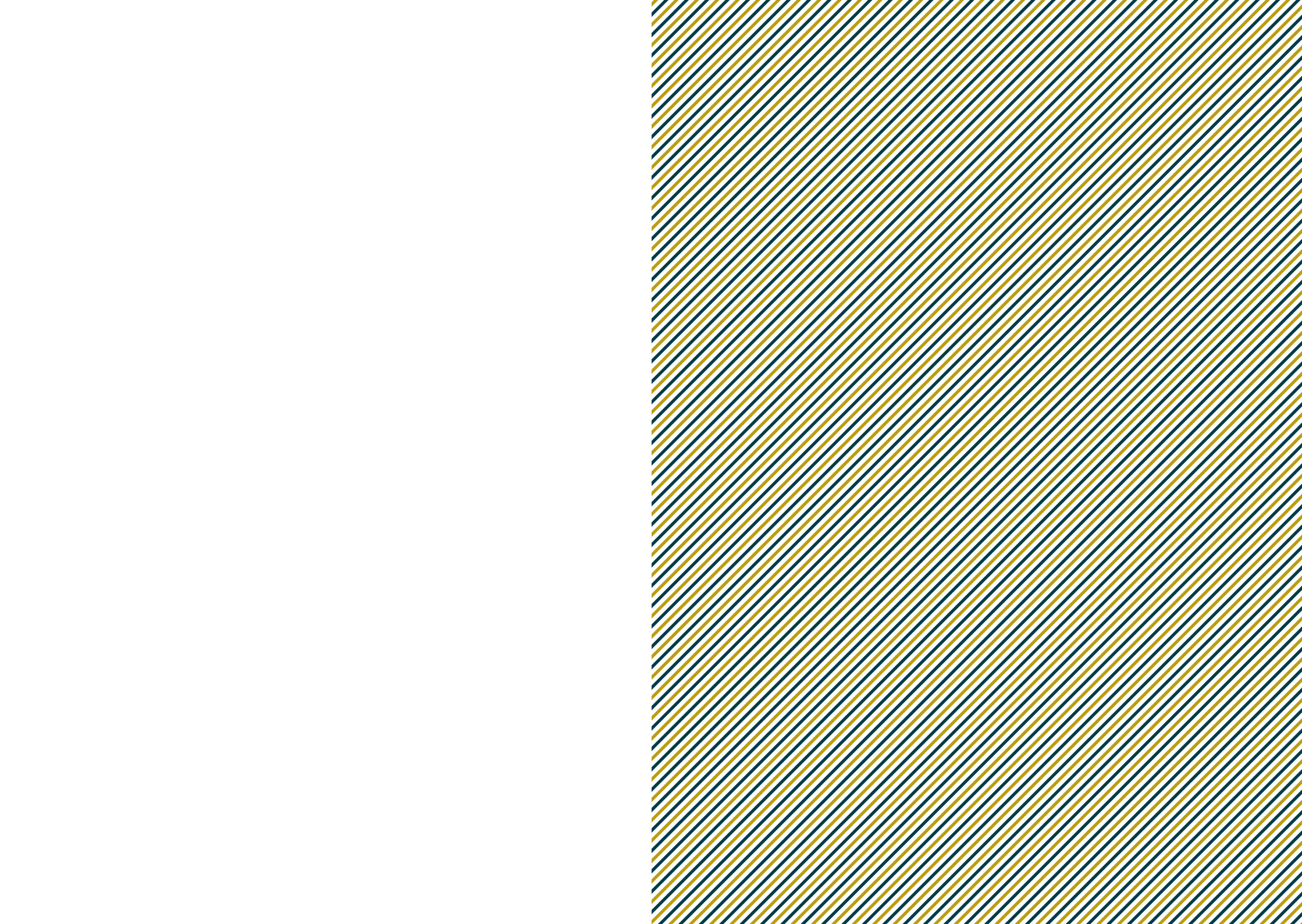
> Our recommendations make more transparent the UK Parliament's scrutiny and influence over European affairs; make European structures more open to national influence; and give citizens a more direct involvement in EU policymaking

The EU has many serious democratic flaws. But the deficit can be tackled. That 56% of Danes against 19% of Brits say their voice counts in the EU should give us pause for thought. Denmark is not traditionally viewed as a pro-European nation. It is the only EU member state, besides the UK, to have an opt-out on the Euro. While there are likely to be multiple factors explaining this feeling of engagement, it may in part be down to the Danish parliament's strong system of EU scrutiny.

The EU does, as critics say, lack a *demos*. If the EU is truly a *demoicracy* then the best way of closing the gap between citizens and institutions is to empower the *demoi*. Finding new ways for the national public to discuss, engage with and interact with the EU is the best way of enhancing their role. To do so, the European Parliament should be made more representative, but by increasing the role of citizens and national parliamentarians in the EU structures the EU can be made more open to bottom-up influence. Multiple levels of engagement should be created so as to give citizens the maximum capability to engage with the EU's structures.

Such a structure would not be perfect. No democratic structure is. But it remains the best way of creating a more democratic European Union.