HOUSE OF LORDS

European Union Committee

28th Report of Session 2006–07

Evidence from the Minister for Europe on the June European Council and the 2007 Inter-Governmental Conference

Report with Evidence

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Evidence from the Minister for Europe on the June European Council and the 2007 Inter-Governmental Conference

1. It has been the Committee's practice in recent years to hear evidence from the Minister for Europe after each European Council.

2. Accordingly, the Committee met with Jim Murphy MP, Minister for Europe, on 12 July 2007 to discuss the outcomes of the European Council held on 21–22 June 2007, and to discuss the forthcoming Inter-Governmental Conference (IGC) and 'Reform Treaty'.

3. The Committee wrote to the Minister almost immediately after that evidence session to give views on what had been discussed and to pose further questions (Appendix 1). In this Report we make available for the information of the House the text of that correspondence, the evidence received from the Minister, and a letter by the Minister supplementing his evidence (Appendix 2). The Committee's letter represents the Committee's thinking so far; we will continue to monitor the IGC.

4. The topics in the oral evidence printed below are as follows:

   - The British opt-outs (QQ 17–18, 43)
   - The Charter of Fundamental Rights (QQ 15–16, 30–32)
   - Competition and the Mandate (QQ 20–21)
   - The dual presidencies (Q 33)
   - Energy policy and consultation with the Scottish Executive (QQ 35–36)
   - Galileo (Q 39)
   - The IGC Mandate and the possibility of re-opening negotiations (QQ 13–14)
   - 'Internal security' and 'national security' (Q 29)
   - National parliaments and the Reform Treaty, including the 'yellow card' and 'orange card' (QQ 22–28)
   - Passerelle clauses (QQ 40–42)
   - The primacy of EC/EU law (QQ 30–32)
   - The publication and explanation of the Reform Treaty (QQ 2–8)
   - The publication of IGC documents (QQ 9–12)
   - The Reform Treaty and the Constitutional Treaty (QQ 3–8, 43)
   - The size of the Commission (Q 34)
   - Transparency and the Council (QQ 37–38).

APPENDIX 1: LETTER FROM THE CHAIRMAN TO THE MINISTER

The IGC and the Reform Treaty

Introduction

The Select Committee is very grateful to you and your officials for briefing the Committee so promptly after the European Council about plans for the IGC and its discussions of the Reform Treaty.

As I indicated during the meeting, the Committee takes its scrutiny of the Treaty very seriously. I also indicated that the Committee would be writing to you soon after the meeting, and in advance of the convening of the IGC on 23rd July, with some follow-up questions which we consider the Government needs to take on board at this stage. This letter will be printed in a report to the House before the summer recess, along with a transcript of your evidence.

This letter also replies to your letter of 16 July with further material arising from the session. We are very grateful for that very prompt letter.

The IGC mandate

It seems that the European Council's mandate to the IGC represents a *fait accompli*. We note that the Government will "resist any moves to re-open what has been agreed" except for ensuring that the text of the future Reform Treaty in fact represents what was agreed (Q 13). What room for manoeuvre does HMG have if others seek to re-open the text in a way that goes against UK interests and how will those interests be secured in any such negotiation?

Transparency and explanation

One of our concerns is that the IGC process needs to be made as transparent as is possible given the inter-governmental nature of the discussions. We note your undertaking to follow the 2004 precedent and make all non-confidential documentation available both to the Committee and to the House more widely in the Library (Q 9). This is a welcome commitment, as is your proposal to challenge any confidential classification with a view to ensuring a document's disclosure (Q 10). Are you now able to say more precisely when a draft text of the Treaty will be available to us?

We noted also your plans to produce two White Papers next week (Q 2), one of which will "make the case based on the fact that this is indeed a substantial series of changes away from the previous Constitutional Treaty" (Q 6). Will the White Paper set these out in full and give the Government's position on the IGC Mandate? The Committee will of course wish to be kept informed of issues arising during negotiations. What other documents will be published and when?

Can you expand on the "important piece of work" you will be undertaking over the next few months to deal with the "significant degree of misunderstanding about the scope of the Reform Treaty and what it sets out to achieve" (Q 8)? Does the Government accept that, if they are to succeed in correcting any such misunderstanding, there is a need both for a high level overview that can be presented to the public and a detailed technical document setting out in precise terms how the Reform Treaty amends existing Treaty provisions?

You agreed with us (Q 37) that more could be done to make the work of the Council transparent. What specific issues are the government pressing in this regard, and in what fora?

You stressed (Q 36) that the Government was committed to ensuring the involvement of the devolved executives in policy formulation and you outlined some mechanisms within Government to ensure this, which we welcome. In the interests of transparency, however, could more be done to reveal the extent of consultation with devolved executives, perhaps by enhancing the information in the devolution section of Government explanatory memoranda on EU legislation?

Ratification

Can you confirm that any future amending Treaty presented to Parliament for ratification will be handled in line with established practices which allow both Houses to scrutinise the ratification legislation?

Treaty provisions: Role of national parliaments

We note your reassurance (Q 22) that language in a new Article concerning the role of national parliaments is "inappropriate" in so far as it appears to impose certain duties on national parliaments. Has this matter been raised with the Portuguese presidency? Can you assure the Committee that the Government will press for the reform treaty to contain more appropriate wording?

Your letter of 16th July notes the need for clarification concerning the orange and yellow cards. We agree that this is needed. In our discussion we covered the proposed "orange card" for national parliaments' concerns over subsidiarity (Q 23) and drew attention to the support this Committee has given to Commission President Barroso's broader initiative concerning responses to more wide-ranging concerns from national parliaments. You argued that the text of the Reform Treaty might not be able to be changed to reflect that arrangement (Q 25). Will the Government nevertheless undertake to ensure that the possibility of enshrining the welcome Barroso initiative in Treaty text is raised in the IGC, given that both the Commission and national parliaments from all Member States (as represented in COSAC) would support such an approach?

We note your reassurance that if the orange card or a similar procedure is introduced, each Member State's parliament will have two votes, and that in our system this means one for each House (Q 28)?

Treaty provisions: the Charter

As far as the Charter of Fundamental Rights is concerned, we note your statement that "the Protocol puts it beyond doubt that a binding Charter will have no new impact on UK domestic law and will create no new powers for the EU to legislate and, in particular, will not extend the ECJ's or national courts' power to challenge or reinterpret UK employment and social legislation. That is beyond doubt" (Q 15). Are you able to publish a line of legal reasoning to justify this position, while of course protecting the specific legal advice received? Are you able to confirm whether other Member States take the same view of the strength of the UK's position as regards the Charter? Might the Charter be used as a means of interpreting the extent of ECHR guarantees, which are binding in the UK (Q 16)?

Treaty provisions: Institutional matter—the Council and the Commission

In discussing the combination proposed of a longer-term Presidency of the European Council and other arrangements for presiding over the Council of Ministers you explained (Q 21) that what was proposed represented a formalisation and extension of current joint working between Presidencies. There are many practical issues to be addressed, including who controls agendas, staffing and rotas among Member States. How are these practical issues being addressed and when will more details of working arrangements be available?

You accepted (Q 34) that proposals to reduce the size of the Commission to ensure efficiency and effectiveness, which we welcome, may lead to friction. How are the concerns of Member States being addressed? Is this an aspect of the mandate that is likely to be re-opened?

Treaty provisions: Passerelle

We pressed you on the *passerelle* provisions and you indicated that unanimity would be required before the provision could operate (Q 40) but that the wording of the text would need to be watched closely. Will the Government press for the new Article to contain an express reference to the need for unanimity? Will any provisions for national parliamentary opposition allow for independent action by each chamber of a bicameral parliament? Given that the Government does not wish to reopen the mandate on this point, will the Government undertake to seek parliamentary approval before voting to use a *passerelle*?

Other matters

You reassured the Committee that "the issue of competition and the UK's approach to competition are protected" (Q 20). It is thus our understanding that there is no change from the EU and EC Treaties in a matter to which this Committee, like the Government, will continue to pay close regard.

We also note your explanation of the change of wording regarding "national security" (Q 29), and on primacy and the Pillars (Q 30).

Conclusion

We will publish this letter immediately on our website and to the House by way of a short report. We will look closely at the text of the Reform Treaty once it is made available.

May I once again thank you for your co-operation in this important scrutiny exercise.

I am copying this letter to Michael Connarty MP, Chairman to the Commons Scrutiny Committee, Alistair Doherty, Clerk to the Commons Scrutiny Committee; Tom Hines, Foreign and Commonwealth Office and Les Saunders, Cabinet Office. It will also be made available to all members of the Lords who attended that evidence session on 12 July.

Lord Grenfell

Chairman of the Select Committee on the European Union

17 July 2007

APPENDIX 2: SUPPLEMENTARY MEMORANDUM FROM THE MINISTER OF EUROPE

During my evidence session on Thursday 12 July, I promised to write on the following issues.

Charter of Fundamental Rights

Lord Maclennan of Rogart asked about the relationship between the proposed new Article 6(1) of the Treaty on the European Union (TEU) (which introduces the Charter), the Protocol on the Charter and the Article 6(3) (which in substance reproduces Article 6(2) of the current TEU, on the place of fundamental rights in Union law). The text of the new Article 6 is in Annex 1, paragraph 5, of the IGC Mandate. The Protocol is set out in footnote 19 to that paragraph.

Article 6(1) will give legal force to the Charter and explain how it is to be interpreted. The Protocol relates to this part of Article 6 and to the Charter, and sets out how the Charter will have effect in the UK. The provisions of Article 6(3), which reproduce existing Union law, are unaffected by the Protocol. Union law about the effect of fundamental rights, such as those contained in the ECHR, will continue to apply. This is consistent with our view that the Charter reaffirms existing rights and principles that are already recognised in Union and national law, such as those found in the ECHR.

Extension of national parliaments' 'red card' to cover any use of the Passerelles

The Committee noted that the Reform Treaty provides a 'red card' for national parliaments in cases where the Passerelle is used in family law. The Committee asked if the Government would consider extending this 'red card' provision to cover any use of the Passerelles.

While I take on board the Committee's comments, as I set out at our evidence session, we would like to see a rapid conclusion to the IGC. The IGC Mandate was agreed by the Governments of all Member States. We would be very reluctant to reopen the Mandate. As I am sure the Committee is aware, all Passerelles are subject to unanimity. We are content that this is a sufficient safeguard.

Yellow/Orange Cards

The Committee asked whether the 'orange card' set out in the IGC Mandate replaced or was in addition to the Constitutional Treaty 'yellow card' provision.

Our understanding is that the 'orange card' is in addition to the 'yellow card'. However, there is some lack of clarity on how the mandate provisions enhancing the role of national parliaments will apply in practice. We shall seek early clarification of this in the IGC and keep the Committee informed.

Jim Murphy MP

Minister for Europe

16 July 2007

APPENDIX 3: RECENT REPORTS FROM THE SELECT COMMITTEE

Session 2005–06

Evidence by Commissioner Franco Frattini, Commissioner for Justice, Freedom and Security on Justice and Home Affairs Matters (1st Report, Session 2005–06, HL Paper 5)

Correspondence with Ministers: June 2004–February 2005 (4th Report, Session 2005–06, HL Paper 16)

Ensuring Effective Regulation in the EU (9th Report, Session 2005–06, HL Paper 33)

Evidence from the Minister for Europe—the European Council and the UK Presidency (10th Report, Session 2005–06, HL Paper 34)

Scrutiny of Subsidiarity: Follow-up Report (15th Report, Session 2005–06, HL Paper 66)

The Work of the European Ombudsman (22nd Report, Session 2005–06, HL Paper 117)

Annual Report 2005 (25th Report, Session 2005–06, HL Paper 123)

Ensuring Effective Regulation in the EU: Follow-up Report (31st Report, Session 2005–06, HL Paper 157)

EU Legislation—Public Awareness of the Scrutiny Role of the House of Lords (32nd bis Report, Session 2005–06, HL Paper 179)

The Brussels European Union Council and the Priorities of the Finnish Presidency (44th Report, Session 2005–06, HL Paper 229)

Annual Report 2006 (46th Report, Session 2005–06, HL Paper 261)

The Further Enlargement of the EU: threat or opportunity? (53rd Report, Session 2005–06, HL Paper 273)

Session 2006–07

Evidence from the Minister for Europe on the Outcome of the December European Council (4th Report, Session 2006–07, HL Paper 31)

Government Responses: Session 2004–05 (6th Report, Session 2006–07, HL Paper 38)

The Commission's 2007 Legislative and Work Programme (7th Report, Session 2006–07, HL Paper 42)

Evidence from the Ambassador of the Federal Republic of Germany on the German Presidency (10th Report, Session 2006–07, HL Paper 56)

The Commission's Annual Policy Strategy for 2008 (23rd Report, Session 2006–07, HL Paper 123)

The Further Enlargement of the EU: follow-up Report (24th Report, Session 2006–07, HL Paper 125)

Minutes of Evidence

TAKEN BEFORE THE EUROPEAN UNION COMMITTEE

THURSDAY 12 JULY 2007

Present

Bowness, L
Freeman, L
Grenfell, L (Chairman)
Maclennan of Rogart, L
Marlesford, L
Roper, L
Sewel, L
Thomas of Walliswood, B
Wright of Richmond, L

Burnett, L
Howell of Guildford, L
Leach of Fairford, L
Wallace of Saltaire, L

Examination of Witnesses

Witnesses: Mr Jim Murphy, a Member of the House of Commons, Minister for Europe, Mr Mike Thomas, Foreign and Commonwealth Office and Ms Shan Morgan, Director of EU Affairs, Foreign and Commonwealth Office, examined.

Q1 ***Chairman:*** Minister, a very warm welcome to you. This is the first time you have been before this Select Committee and we are very grateful that you were able to find time in a very busy schedule and at rather short notice—inevitably—but it was very important that we should be able to meet with you before the 23rd of the month, because of the IGC. We welcome Shan Morgan and Mike Thomas to the table. Please feel free to invite either or both of them to intervene. We have around the table Members of the Select Committee but we also have four Peers who are not, but who, because of the high interest in the subject matter and your presence before this Committee, we welcome to the table. While I will be giving priority, as I have to, to members of the Select Committee in the questioning, they will come in at various points with their own particular questions or comments. We are being televised. We do understand, Minister, that you are on a running whip and that you might have to leave us at some point—we are hoping not too often—and we will of course be sending you the transcript of our session so that you can check it. Would you like to begin by making an opening statement?

Mr Murphy: Thank you for that very kind introduction, Lord Grenfell. I also thought it was very important to take this opportunity for us to have this session in advance of, as you say, 23 July, both in terms of the process within the Portuguese Presidency but also in terms of having the session well before our respective recesses. I have already given evidence to the Scrutiny Committee in the House of Commons. I am told the two Committees are different in important ways and I look forward by the end of the proceedings to discovering what important ways those are. Thank you very much for your kind words of introduction.

Q2 ***Chairman:*** We will go straight to the heart of the matter, if we may, and get on to the Reform Treaty. Maybe you could just remind us of the procedure from now onwards about when the Treaty is expected to be published and what the Government's plans are for indicating what the changes from the provisions in the EU and EC treaties are. I should say we have been in contact with you about this and I also understand that you are probably not going to produce a paper comparing the Constitution to the Reform Treaty. I have some sympathy with that because I can see that those who are really interested can look at the mandate and look at the Constitution Treaty and work out fairly quickly where the major changes are, but anyway, that being said, maybe you could just tell us what process you are going to follow once you have the document in your hands.

Mr Murphy: Obviously, this is one of the most significant issues over the next six months or so, just how we continue to inform Parliament, how we continue to have a conversation with Parliament in such an important area. What I will say, by way of introduction to the proposed timetable, is that it is certainly our understanding that the Portuguese Presidency when it opens the IGC will publish in the margins of the General Affairs and External Relations Council on 23 July a draft which will then be the subject of much technical analysis, understandably, by lawyers and by what we have now come to call focal points—and Shan of course has been one of our two focal points in that prior process. What we would intend to do—and your Lordships may find this helpful as well—is that we would intend at or around that period to produce two White Papers, one, as traditional, looking ahead to the Presidency and expectations of the Presidency, and secondly, also a White Paper on the Reform

Treaty, at similar times. We are still looking through the exact detail in terms of Parliamentary timing but around 23 July would be the timeframe, either both on the same day or possibly on consecutive days, but we are still looking into the detail of achieving that. What the Portuguese Presidency has said is that it is looking to conclude deliberations—as your Lordships may already be aware—by 18 October, with signature at the December European Council. In terms of the specific point on publishing a comparative text, the Committee has more experience of this than I have, of course, but my understanding was that the rationale for publishing a comparative text on what was the Constitutional Treaty was that, by the nature and the purpose of the Treaty, it was important to carry out that comparative piece of work. On a standard reforming treaty that has not been the process in the past in the sense that we have moved back towards a standard reforming treaty within the tradition of Maastricht, Nice and Amsterdam. We would not propose that to be our approach now, as we progress through the Portuguese Presidency.
Chairman: Thank you for that explanation.

Q3 ***Lord Burnett:*** Have I understood it correctly, Minister, that you are not proposing to produce a comparative text between what was the Constitution and what is now the Treaty?
Mr Murphy: That is right.

Q4 ***Lord Burnett:*** You are not going to do that?
Mr Murphy: That is right, yes.

Q5 ***Lord Burnett:*** The reason for that is?
Mr Murphy: Obviously, the position as was was a comparison between the Constitutional Treaty and the ambition that that had and what went before. In terms of how the Government makes its case—and I appreciate absolutely that we have to make our case about substantial change away from the Constitutional Treaty towards the Reform Treaty—we will be publishing, and we have sought to do so already, to draw attention to an understanding of the substantial difference between the previous Constitutional Treaty and this reforming treaty but at the moment it is not our intention to produce a formal paper.

Q6 ***Lord Burnett:*** What are you going to produce?
Mr Murphy: What we intend to do is the White Paper on or round about 23 July which sets out in that White Paper our approach to the reforming treaty as is now. This of course is not just a technical question; it is clearly a very hot political question as well, and I appreciate that what we do have to do is, both in a technical way but also in a political way, particularly in the House of Commons, to be able to make the case based on the fact that this is indeed a substantial series of changes away from the previous Constitutional Treaty. Our case will be made in that White Paper towards the end of July.

Q7 ***Lord Burnett:*** So in that White Paper you will be drawing the distinction between what was the Constitution and what is now the Treaty. The substantial differences will be adumbrated in the White Paper.
Mr Murphy: My Lord Chairman, that would be the closest you will get to a comparative text. That White Paper will basically summarise our position and it will set out the differences but it will not be formally a comparative text in the way that the previous approach had been in terms of the Constitutional Treaty.

Q8 ***Lord Maclennan of Rogart:*** From the point of view of informing the public about the significance of the Reform Treaty, is it not more important to make comparisons with the law as it exists rather than the Constitutional Treaty, which does not?
Mr Murphy: Yes. Again, the dividing line between technical and important detail and the cross-over in terms of the political temperature in this context is often ill-defined, in my view. I think that is an important point on the basis that there is a significant degree of misunderstanding—I could conjecture as to why that is but there is a significant degree of misunderstanding about the scope of the Reform Treaty and what it sets out to achieve. That is an important piece of work we will have to undertake over the next few months.

Q9 ***Chairman:*** Thank you very much indeed, Minister. A question on transparency. Everything we have said up to now has an element of concern about transparency in it but the European Parliament has been calling for the publishing of all IGC papers submitted for discussion. Has the Government taken a view on this?
Mr Murphy: We have, and it is obviously connected to the first question that you posed. We would like to take a similar approach to that which we took in the IGC process in 2004, where we publish all the documentation that is not provided in confidence or on a confidential basis and perhaps to place it in the library of both Houses is the best way and perhaps, if it is appropriate, to send it directly to yourself.

Q10 ***Chairman:*** That will be very helpful.
Mr Murphy: To this Committee and others. I think perhaps we can go a little further than that, if we can, which is that, if it is not certain as to the status of the documentation, as to whether it is confidential or for open publication—and I have spoken to officials about this—that we go back and check the status and

come to a presumption that we can provide this documentation for information. I think that may help your Lordships in deliberation as the process evolves.

Q11 ***Chairman:*** In other words, your default position is that it could be made available unless there is a clear indication within the IGC that this is not for circulation?
Mr Murphy: That is exactly right.
Chairman: Thank you very much indeed.

Q12 ***Lord Marlesford:*** I think you said that there will be a draft supplied to the IGC right at the beginning and this will be examined by the focal points, of which you mentioned Ms Morgan as being one. That will be a pretty crucial document. Will that be published?
Mr Murphy: Yes. Again, through your Lordships, through Lord Grenfell, that may be an appropriate way of doing that.
Chairman: That is fine. I will certainly share it with the Committee. I will not be taking it home and burying it under my pillow! Let us move on to some policy issues.

Q13 ***Lord Sewel:*** Can we turn to the mandate that came out of the IGC? It is pretty explicit and tightly worded, more so than on many previous occasions, but I think it is worth exploring the extent to which you see the possibility of wriggle room existing within the mandate and where there may be attempts to vary it during the course of negotiation. We have already heard the Polish President and Prime Minister saying various things about re-opening discussions on voting in Council. Is that an area, for example, where you expect there to be an attempt to disturb what seems to be a settled position?
Mr Murphy: Our approach, certainly my approach, but the Government's approach is that we wish to make progress on what has already been agreed so that we can pretty quickly move beyond the conversation about structures, which are of course crucially important, but then move on to the debate about what these structures enable us to do in terms of delivery for our citizens. So our approach is to resist any moves to re-open what has been agreed. That will not stop others offering a comment, an observation, aspiring to do something, and that getting coverage in the media domestically and internationally, but it is our intention to resist such moves. The only minor caveat—and it is very minor—is that our legal teams and others will examine the text very carefully to make sure that what we have committed to in our negotiations is reflected absolutely in the text in great detail. So in terms of policy, we resist; in terms of the detail, we are absolutely determined to continue to ensure that the deal we achieved is reflected in the text.

Q14 ***Lord Sewel:*** Do you think you will be able to hold that position?
Mr Murphy: In conversation with the Portuguese presidency—and I have spoken to the Portuguese Ambassador earlier this week and I will be seeing him again shortly—the Portuguese Presidency wishes to conclude this in October, and it is difficult to see how you can achieve that timescale, which I think there is a real appetite to drive towards, while allowing the re-opening of anything of any substance. So yes, I believe so.

Q15 ***Lord Maclennan of Rogart:*** Minister, the Government's report on the outcome of the negotiations on the Charter of Fundamental Rights indicated that it would not be cited in British courts. Are you satisfied that the mandate to the IGC provides for that and, in particular—and this is rather a detailed question which you may choose to answer subsequently in writing perhaps—do you consider that the protocol relating to Article 6(1) of the Charter might be bypassed by Article 6(3), which could allow for the references to be made in court to the fundamental rights and general principles of European law? This is really a question about the status of the Charter as you see it in court. A final particular question: if a worker from a Member State is taking action in the British courts and he comes from a country where there is a statutory right on collective bargaining within the union, would he be able to cite that in this country?
Mr Murphy: There is an awful lot in that question. The short answer to the last part of your question is no, such a worker in that circumstance would not be able to cite the Charter to enable that enhanced power or protection. In my sense, Lord Chairman, Lord Maclennan's question here I think relates to the noble Lord's earlier question about a misunderstanding because this is one of the great areas where there is a degree of misunderstanding of really what has been expected and achieved as part of the negotiations. The Protocol puts it beyond doubt that a binding charter will have no new impact on UK domestic law and will create no new powers for the EU to legislate and, in particular, will not extend the ECJ's or national courts' power to challenge or reinterpret UK employment and social legislation. That is beyond doubt. In the two weeks I have been in the job I have been round some of these arguments on three or four occasions already and clearly one of the questions that was asked is "It is a protocol; what does that mean?" So I undertook to look at this in more detail, Lord Maclennan, and certainly the fact is that Article 311 of the EC Treaty makes it absolutely clear the legal status of this and other

protocols, so it should put it beyond doubt. There is a very technical response which, if the Committee would wish me to share it, I am happy to do so but, of course, we can enter into correspondence as well if noble Lords would wish to do so. In terms of the specific point, the technical answer is the Protocol sets out what the UK considers will be the effect of the Charter when it is given legal effect. It relates to the Charter and Article 6(1) and does not affect the continued application of Article 6(3), which in substance reproduces Article 6(2) of the Treaty on European Union. I appreciate that is not an answer that everyone in the United Kingdom will follow and interpret in great detail and it may be helpful for your Lordships if I follow that technical answer with a more substantive answer which is slightly less Euro legalese than that response.

Q16 ***Chairman:*** I think this is a case where time will tell. We are going to have to wait and see what happens to a certain extent because there could be instances possibly where, although the Charter does not apply, the subject matter of interest to an individual may come under the European Convention of Human Rights in that case, which takes precedence, and I do not know what the answer to that is. But there could be a conflict if we say the Charter does not apply but we know that the European Convention does. I am not quite clear how that will be resolved.
Mr Murphy: Perhaps, with Lord Maclennan's encouragement, I will return to the Committee on that and some other points.

Q17 ***Lord Leach of Fairford:*** Minister, three ECJ judges have said the opt-outs will not be effective, and so has the former Justice Minister, Antonio Vittorino, so have the Commission and various legal experts. And legal advice to the Commons Scrutiny Committee warned that the Charter would affect English law. Obviously, politically, you have said what you hoped would be the case but we have been there before, have we not, like over the Working Time Directive, where there were other ways, because of the generality of the law, to surmount it. I was wondering what legal advice that was publishable you could produce of comparable weight to support your position.
Mr Murphy: As I say, the legal architecture of the status of protocols is contained in Article 311 of the EC Treaty. In terms of the legal advice, we have very strong UK legal advice that our rights, as I have articulated, are absolutely protected. In a sense, in terms of the additional point your Lordship made, it is about the advice given to the Commons EU Scrutiny Committee. I read some of the media coverage and spoke of course in my evidence session with that Committee. It is certainly my understanding that the observations—and your Lordships may wish to return to this, of course, but certainly my understanding is that the advice given to the Commons Scrutiny Committee was on the previous text of the Constitutional Treaty[1] and was offered in advance of the new draft text being tabled at the meeting involving all the heads of government. As a consequence of the changes achieved as part of the negotiations on the UK's red lines, I think that observation provided to the House of Commons EU Scrutiny Committee really was an accurate assessment in many ways of the old Constitutional Treaty[2] but was not an accurate assessment of the Reform Treaty we now have before us. In terms of the legal advice that is publishable, of course, it is a standard process in all of these procedures not to publish the legal advice, and that has been the case through these processes, I understand, in all the IGC processes.

Q18 ***Lord Leach of Fairford:*** We will have published advice that they are not effective and unpublished advice that they are. That is where we are likely to end up. Would that be a fair statement?
Mr Murphy: I do not believe it would be a fair statement but, of course, it is not for me to judge whether it is a fair statement. The published advice, as I understand it, is on the old Constitutional Treaty and an assessment of that text, which did not reflect the changes that took place as part of the negotiations on the UK's red lines but, as to what is fair, I am not certain the noble Lord and myself will be the objective arbiters of what is fair and what is unfair.

Q19 ***Lord Bowness:*** May I ask the Minister to confirm that when the draft which you are expecting in July is published it will include a complete draft of the protocols which are referred to in the footnotes of the mandate?
Mr Murphy: The answer to that question is yes.
Chairman: I would like to move on now, if we may. Let us take a look at President Sarkozy's initiative on competition.

Q20 ***Lord Freeman:*** Minister, some elements of the British press reported President Sarkozy's comments after the recent Council as to the effect that the removal of the reference to free and undistorted competition from the main body of the Reform Treaty represented a victory for those who believe in what is called a social market economy. The same press reported the British Prime Minister as saying

[1] Note by the witness: The Minister, upon reading the text, realised that the words "Constitutional Treaty" should be replaced with "IGC Mandate".

[2] Note by the witness: The Minister, upon reading the text, realised that the words "Constitutional Treaty" should be replaced with "IGC Mandate".

that really there has been no change because of the incorporation of references to competition in a protocol. What actually is the position?

Mr Murphy: The actual position is that the reference to free and undistorted competition will be contained in the Protocol which will be published and, as I alluded to in an earlier response, that Protocol has firm, absolute legal standing based on Article 311 of the existing EC Treaty, and that states that the annexed protocols have legal and binding status. I cannot, and you would not wish me to, speculate as to Sarcozy's motivation or the press coverage that went with it. All I can say is that the Government is absolutely content that the issue of competition and the UK's approach to competition are protected, and this does not reflect a change in the EU's approach to competition. It may be helpful for your Lordships to be aware that all other references to competition in the existing treaties will remain. For example, for the record, it may be helpful just to refer to which of those there are: Articles 4, 27, 34, 81 to 89, 96, 98, 105, and 157 from the EC Treaty. I do not think it would be wise for me to speculate on public pronouncements of other senior elected politicians across any of the other 26 Member States but we are clear as to where we are in terms of a legal position.

Chairman: Thank you very much indeed.

Lord Roper: The Minister will, I think, confirm that what was "taken out" was not of course in any of the existing treaties. It was merely something that was in the Constitution treaty.

Q21 ***Chairman:*** It was in the coffin already.

Mr Murphy: That is a very helpful point that I should perhaps make! That was not the tone of my evidence session at the Commons Committee. I should add however that President Sarkozy in his public comment on this did—and I think this is important, both because of what it is but who says it—in removing symbolically free and distorted competition from the object of the EU which was not there to remove, say that "the treaty does not change EU law." That is from President Sarkozy himself.

Chairman: I think we are clear on this point. It will be interesting to see whether or not the ECJ has fully taken this on board or whether they will see this as an invitation to be a little too relaxed in their interpretations, but we hope that they will not take that line.

Q22 ***Lord Roper:*** Minister, I have two questions. The first you may think is a slightly trivial and pompous one. If you look at page 26 of the Presidency conclusions, you will see that the mandate does provide a new Article 7 on the role of national parliaments, in Title II, *Provisions on Democratic Principles*, and it begins with a rather strong phrase saying "National parliaments shall contribute actively to the good functioning of the Union." Do you think it is constitutionally appropriate for the Treaty to tell national parliaments what they "shall" do?

Mr Murphy: Lord Roper, I do not think that is a trivial point at all; I think it is an important one. It is an issue that was raised at the Commons Scrutiny Committee as well. Looking through this, it is certainly my observation that I think this language is probably inappropriate. I think it is more down to drafting than intent, and this is something that we would intend to return to as part of the process. I think there is a welcome improvement in the role of national parliaments but I do not think this phrase fits that category.

Chairman: I am sorry we cannot substitute the word "do" contribute actively, but that is a little closer to the truth, I think! Let us move on.

Q23 ***Lord Roper:*** On a more substantive question, paragraph 11 sets out a provision that if a simple majority of national parliaments object to a proposal on subsidiarity grounds, the Commission will have to re-examine the text. This is sometimes called an "orange card", perhaps because of the associations with the Netherlands, but is that where it came from? What consultation had there been with national parliaments before there was a change from the provision of the so-called "yellow card" in the Constitution Treaty?

Mr Murphy: The noble Lord Lord Roper speculates as to why it is called an orange card in terms of the Dutch, and that is absolutely right. This has often been most associated with the Dutch and the Czech governments in terms of this approach. In terms of the specific consultation with national parliaments across Member States, up until now I have not been involved in the detail of consultations. In terms of the consultation that took place in that very short time period between the publication of this proposal and it being agreed, I am not certain there was effective consultation with national parliaments across the EU. Certainly that is my sense on this but, as I say, I think it emerged—Shan may wish to correct me—rather late; welcome, but late in the process, and therefore it just would not have been possible to have the effective consultation that would otherwise be the case.

Q24 ***Lord Roper:*** But in principle, Minister, you would agree that if there were proposals in drawing up a mandate which did affect national parliaments, it would be the view of HM Government that Parliament would be consulted?

Mr Murphy: Yes, absolutely.

Q25 ***Chairman:*** Following on from that, and the whole question of consultation with parliaments, you recall, Minister, that at the June 2006 Council, the Commission was called upon to respond to any concerns that national parliaments might wish to raise with the Commission which were not necessarily dealing with subsidiarity or proportionality; it might be simply the merits of a particular legislative proposal or something appearing in the Annual Policy Strategy or anything. This was greatly welcomed by the national parliaments although it did give some concern to the European Parliament, who thought we were getting a little uppity. We were slightly distressed to see that this is not reflected in the mandate and the fear that was expressed in the last COSAC and again at the Chairmen's meeting which I have just come back from in Lisbon was that, by focusing on subsidiarity and proportionality, you are narrowing the area of activity for the national parliaments, you are limiting it to subsidiarity and proportionality, whereas it was perfectly clear from what Barroso told us at the joint meeting that they were responding to—and we know they are responding to because they responded to us—on broader matters. We would like to see that somewhere in the mandate and in the Reform Treaty because, if it is not there, people will assume that somehow that right has disappeared.
Mr Murphy: My Lord Chairman, we are absolutely committed to that right being protected on the basis that it seems to have—and I am willing to be corrected, of course, but from all that I can understand from my two weeks in this role, there seems to be an acknowledgement that this system has in a practical sense worked, and I think some of these proposals were encapsulated in the June 2006 European Council conclusions. I hope your Lordships will not mind me referring back to an earlier answer I gave to Lord Sewell that it would not be our intention to re-open important detail of the negotiation, and I think, unfortunately, from the perspective of the Committee, that would fall into that category. However, I would welcome your Lordships' assistance in making sure this remains the case. We remain absolutely vigilant to ensure the type of protection and involvement of Parliament and Parliament's committees in this process.
Chairman: In that instance, of course, we would have to rely on the goodwill of the Commission to respect the injunction laid upon them by the Council of June of last year.

Q26 ***Lord Burnett:*** In the circumstances of the question and if there is a re-examination of the text, does that mean, in the Minister's view, that it has to change or can it be re-examined and reproduced in exactly the same form, and therefore is it really a fairly empty gesture?
Mr Murphy: I apologise but I am not certain that I followed the detail of the noble Lord's question.

Q27 ***Lord Burnett:*** Paragraph 11 sets out a provision that, if a simple majority of national parliaments object to a proposal on subsidiarity grounds, the Commission will have to re-examine the text.
Mr Murphy: I thank the noble Lord for drawing my attention to the specific paragraph. My understanding—and if I am incorrect, of course, I shall follow this up but I am certain this is the case. It is not just an issue of re-examining. There are three or four stages involved in this process but if the draft legislation is contested on the grounds that the noble Lord Chairman alluded to, the Commission cannot choose to maintain it regardless. That is step one. Secondly, the second stage, it is a question that they must come to a view as to whether to retain, amend or withdraw the draft Act. Thirdly, if it decides to retain the draft Act, it must justify to the Council and to the European Parliament why it considers the draft complies with the principle of subsidiarity. Fourthly and finally, if the Council, i.e. 55 per cent of Member States or the European Parliament, by a simple majority disagree with the Commission, taking account of objections of national parliaments, then the proposal is killed off. So I think that four-stage process is more than a "The contents of your objection are noted." I think there is a pretty substantial series of protections there.
Chairman: Yes, I think that is a very important point you have made, Minister. It gives another explanation of why it is called the orange card, because it is neither yellow nor red but if you mix the two together you get orange. Generally speaking, we are happy that there is not a red card for national parliaments but there is one for the Council if *in extremis* they feel that the Commission has not respected the rules. Let us move on.

Q28 ***Lord Roper:*** One question on the orange card, and that is, in the legislation that was introduced in the Commons for implementing the Constitutional Treaty, it was suggested that only the House of Commons would be able to play the yellow card. What do you see as the situation as far as the orange card is concerned and will there be an opportunity for this chamber to play it?
Mr Murphy: I hope your Lordships do not mind that this is the one area where I am willing to speculate on something. There is a direct response which I will give you in a second or two but I think it is one of the areas which will cause some excitement—or a great deal of tension is maybe a better way of putting it—in the Palace in which we all work, for understandable reasons, but the straight answer is that each Member

State will have two votes through the orange card proposals. Where there is a unicameral approach, of course, that chamber has both votes but in the constitutional system that we have, your noble Lordships may be interested to have it confirmed that there will be one vote each, and on that basis I think that will be one of the issues that we will return to in terms of the conversation but that is what it means and that is their intention. That is how it will work.

Q29 ***Chairman:*** That is certainly the basis on which we proceeded with our pilot runs on the subsidiarity and proportionality check. Thank you very much indeed. Let us get on with some of the other issues.
Lord Wright of Richmond: Paragraph 15 of the Presidency conclusion talks about strengthening Europe's internal security. The Government has told the House of Commons that the outcome of discussions on national security was very satisfactory. Is there a significance in the changing of this wording and can you tell us anything about the process that led to the change?
Mr Murphy: With your Lordships' permission, I will make two points, one of which I made yesterday in an Adjournment Debate in the House of Commons on national security. I said directly that this Treaty makes it clear that for the first time Member States have sole responsibility for safeguarding their national security, and that is an important point on the basis of the following. The phrase "internal security", which previously was in common use, in our view was open to misunderstanding. "Internal security" had become a phrase in common use to describe two different but not mutually exclusive things. Internal security was the internal security within Member States but also internal security within the European Union and we wished to move away from the possibility of misunderstanding, which is why we have now moved towards the description of national security, and the fact that it is for the first time explicit in terms of this Treaty.

Q30 ***Chairman:*** Thank you very much. Could we come on to the rather difficult question of the primacy of EC law? With the collapsing of the three Pillars, it would seem *prime facie* that the primacy of EC law would then be extended to encompass all the EU legislation. Is that, in your view, the case and would the Court of Justice be expected to assume that?
Mr Murphy: We are moving away, of course, from the three-Pillar approach and there will now through the Treaty be the equivalent of two distinct Pillars. I think it is important to put on the record that the common foreign and security policy will remain a separate treaty. As this conversation evolves over the months to come, it is important for the Government to ensure that there is a very clear understanding of that fact. That ensures that the UK's foreign policy will of course be fully protected and the UK's interests will of course be fully protected. As the noble Lords know, the separate Pillar on justice and home affairs will be abolished. My understanding is that will go into the Community method but I think it is also important to point out—less technical than the previous response—that our existing Title IV opt-in protocol on police and criminal justice co-operation has been secured. That is an important protection and we will retain that opt-in where we think it is in our national interest. In respect of the final point which my noble Lord made, the Reform Treaty will not alter the principle of primacy established by the well set up case law of ECJ—it is my understanding that that dates back to 1964 or so in terms of that—but will extend its application to include EU legislation in the field of police and judicial co-operation, but in terms of the UK context, it is my understanding that jurisdiction will apply where we have chosen to opt in. It is not a default jurisdiction.
Chairman: Does that answer your question, Lord Wright?
Lord Wright of Richmond: I think it does, yes.
Chairman: Thank you very much indeed. Let us move ahead.
Lord Howell of Guildford: Can I first of all apologise for coming late because of duties in the chamber but secondly, I would like to pursue the issue of the role of the Court of Justice because that relates to what you were just discussing. What puzzles many of us is that when people in Brussels say there cannot be a two-tier system of European rights, therefore every citizen has the right to go to the European Court of Justice and make claims for anything enshrined in the Charter of Fundamental Rights, which you have discussed earlier before I arrived, how is that going to be avoided by any of these opt-outs? The plain fact is that the law of Europe is the law of Europe in these matters and citizens will be able to go to the Court of Justice and plead their case. Can the Minister explain how one is going to get round that basic fact with the way the system works?

Q31 ***Chairman:*** Could you do it quite briefly because we did cover this ground fairly well.
Mr Murphy: I shall attempt to do so briefly under your guidance, my Lord Chairman. The Charter of Fundamental Rights does not extend any additional powers or protections.

Q32 ***Lord Howell of Guildford:*** I meant more broadly than just the Charter which you have discussed, my Lord Chairman. I meant that the whole range of European EU legislation and law is open to the individual citizen to take to the European Court of Justice. How can we stop that?

Mr Murphy: I may invite, with your permission, Lord Grenfell, Mike Thomas to speak on some of the legal background of this but certainly it is my clear understanding that the jurisdiction comes into effect at the point at which the UK would choose to opt into any of the justice and home affairs issues, for example. There is no default jurisdiction across the board.

Mr Thomas: The European Communities and now the European Union of course have had a court of their own since their inception and so in that respect citizens have had the right to go to the European Court since the word "go". The Reform Treaty will not make any difference to that. There are a couple of other points perhaps worth mentioning. As now, the European Court of Justice would have no jurisdiction over common foreign and security policy matters, apart from in a couple of exceptional areas. Basically, the position about jurisdiction is the same except in respect of the old third Pillar, which will disappear, which in principle will become subject to ECJ jurisdiction in the way in which the first Pillar currently is but, as the Minister said, in respect of all justice and home affairs matters, the United Kingdom will have its opt-in arrangements under the Protocol. So to the extent we were not opted in, the court would not in effect have jurisdiction so far as the UK is concerned to entertain applications to deal with stuff that we have not opted into.

Q33 ***Chairman:*** Thank you very much indeed. Perhaps you could now, Minister, enlighten us a bit on the architecture of the presidency or what would appear to be dual presidencies, because you have the so-called permanent president of the Council and you have the presidency of the Council, given that the six-monthly Council of Ministers presidencies will remain. I think a lot of people were hoping it would disappear altogether but we are stuck with it, so how do we handle it?

Mr Murphy: The distinction here, as noble Lords will be aware, is that the President of the European Council will chair, of course, the European Council for a period, I think I am right in saying, of two and a half years. In terms of the presidency of the Council of Ministers, it will continue as now, against the noble Lord Chairman's expectations and perhaps wishes, but there is an important change, which is under what has been termed—I am not sure I enjoy the term—a "team presidency" system. I recall our own presidency, when my role in government then was as a minister at the Cabinet Office, where our priority was better regulation, for example, crucially important but unfashionable, but nevertheless we have made progress on it. We have had a process of co-operation with the immediate past presidency and immediate future presidency to enable some consistency across a longer period of that 18 months. What will happen now is that we are going to extend, with a greater degree of formality, that joint working approach so that there will not be unanimity. I think we are a long way off, and we should be a long way off, quite rightly, from a unanimity of what we expect from the presidency of the Council of Ministers period, but there will be a greater sense of consistency over that 18 months and continuity by virtue of the personnel and the Member States' involvement over that longer period of time.

Q34 ***Chairman:*** I would like, if I might, to interpose here a question, that is whether or not you are happy with the decision taken about the reduction in the size of the Commission and do you not think that there will be a great amount of pressure coming, particularly from some of the newer members, to respect what they see as almost a right to have a representation on the Commission and how is that problem going to be resolved? It is not just the new members, but I remember, when Giscard D'Estaing gave us evidence on our earlier inquiry into enlargement, he expressed in very florid, Gallic terms his outrage at the suggestion that there might be a period when there was no Frenchman in the Commission and he found this quite an abhorrent thought. Do you think that there will be pressures building up and how is this going to be resolved?

Mr Murphy: I think it is inevitable that there will be those who do not achieve what they see as their rightful national place around a table of, as was, 27, so I think it is inevitable that there will be a degree of frustration and friction that national parliaments of Member States demand on this, but what we are trying to do is to frame this debate in the context of it as smaller, but with a greater degree of efficiency and effectiveness. We also have to work through the detail of this to reassure people and to reassure Member States that their voice can still be heard because, as I think you have noted, my Lord Chairman, the Commission will be smaller than the number of Member States and that is our commitment as part of the process of rationalisation and greater efficiency. I think it is unavoidable, inevitable that there will be friction and angst, but we have to manage that in getting the detail right to ensure that Member States still feel that they have a voice at the top table.

Chairman: Thank you very much indeed. I am grateful to you for giving us your views on that. I have lost one of our two Scotsmen around the table, but, Lord Maclennan, would you care to raise this very thorny issue over the move to QMV for energy policy.

Q35 ***Lord Maclennan of Rogart:*** Yes, this is, in a sense, an internal domestic issue. How does the Scottish Executive play into the ongoing discussions and particularly on this issue of energy?

Mr Murphy: My Lord Chairman, of course you still have two Scotsmen around the table!

Q36 ***Chairman:*** Sorry, I was referring to those below the salt!
Mr Murphy: I see. I thought that in my two weeks as Europe Minister I had developed a different dialect! I know that I have developed a different vocabulary, but I had not realised I had developed a different dialect! On the specific point, I think the straightforward answer, my Lord, is that the Scottish Executive, regardless of the results of elections in the recent past, still remains very involved in our processes on this. There is the Joint Ministerial Committee on Europe at which the Scottish Executive is represented. It is chaired by the Foreign Secretary and the Scottish Executive, I am advised, was represented at the 5 June meeting of that Committee which discussed the Government's approach to the European Council and the Treaty reform. It is important, my Lord Chairman, also to say that it really is of great significance that we continue not only to involve the Scottish Executive, but our colleagues in Wales and, where appropriate, our colleagues in Northern Ireland on issues of significance to them.
Chairman: Thank you very much indeed. We have touched on transparency, but we have one more question on this. Lady Thomas?

Q37 ***Baroness Thomas of Walliswood:*** From the point of view of the citizen, one of the things which gives the Union a bad name is the secrecy within which the Council seems to operate. Has there been an improvement in transparency, do you think, over the last 12 months or so?
Mr Murphy: I think Lady Thomas is correct, my Lord Chairman, that one of the issues, if not the only issue, that relates to this reconnection between citizens and the institutions is transparency and the other really substantial one is the ability to turn bold statements into real action on the ground as a kind of backdrop to much of that. In terms of the specific point of transparency, I think it would be wrong for me to say that this has been resolved. The detail of the evolution of transparency is still being worked on, but, if we are looking at what has been achieved thus far, I think there have been improvements, but we continue to look for improvements elsewhere. Very briefly, I will outline what is certainly my understanding of what the June 2006 European Council agreed on this, and there are three specifics. I think they are each in turn important individually, but as to whether collectively they achieve the shared ambition of the reconnection between the citizen and the European Union, I think the jury would still be out of course. In terms of the specifics, firstly, there is an agreement to open to the public the presentation of the final deliberation of legislative acts to be adopted by co-decision; secondly, the opening to the public of the first deliberations of important new legislative proposals other than those to be adopted by co-decision; and, thirdly, holding regular public debates on important issues. Now, I think those are each in turn specifically important, but there is also the decision, and I am not sure it is widely taken up, but the decision for Council deliberations, debates and other events, such as press conferences, to be broadcast live through video-streaming on the website of the Council, and from September 2006 all public debates and deliberations have been transmitted in all languages. These are important structural changes, but I think it would be wrong for us to say, and I do not have the figures, how many new visitors there are to this website as a consequence of these changes, but I think what these changes to me reflect is an acknowledgement of the nature of the problem and a willingness to move, and I am sure that it should be continued, the move in that direction, but we have of course to guarantee the right to transparency and frank, honest conversation and, your Lordships and Lady Thomas will be aware, with the kind of play-off in that conversation.
Chairman: I think there has been some improvement. A cynical friend of mine suggested that nothing was more likely to turn off the British public than watching on television the Council at work! Anyway, in the interests of transparency, we welcome the improvements, but it seems to me that there is still quite a long way to go.

Q38 ***Lord Maclennan of Rogart:*** Just on the proposals for the legislative activities, they seem rather unclear as you spelled them out. Is it meant to permit the public actually to audit the discussion in formal session as with the Security Council, for example? Obviously there will be discussions in the margins, but the alternative to that is that the versions that come out afterwards are not always the same from different participants and the public just see it as a wrangle. Is that form of words that you have read out intended to allow the public to participate fully, and the press for that matter, in the dialogue on the legislative role?
Mr Murphy: This is not an effective enough way to allow a two-way conversation of the process. It is certainly my understanding thus far, and your Lordships will have your own experiences of it, but this is an exercise in opening up the observational processes rather than developing a two-way conversation about the processes. Now, there are other ways in which perhaps we could look at as to how you develop a proper conversation which leads to a specific and approved outcome. I think ultimately, if I could just reiterate the point in terms of observation, it is an observation based on an

ability to simply access a website and, ultimately, for those who are interested or those who may be tempted to become interested, notwithstanding my Lord Chairman's experience of cynical friends, the world of increasingly available broadband technology at home nowadays of course, I think that is a really important or potentially important change in the way in which the debates are carried to the public who may be interested in the debates. I think Lord Maclennan has put his finger on a really important point which is that this is not an effective enough way of inputting into the process and, if your Lordships would allow me, I think on the basis of that question I need to go away and do some more thinking about how we could have a better and proper conversation about Europe in a reasonable way based on facts.

Q39 ***Chairman:*** That would be welcome. Minister, could you give us briefly your views on funding options for Galileo and maybe in particular whether you think it would be a good idea—I think we probably think it would—to make sure that the Finance Ministers are involved in this discussion as well.

Mr Murphy: My Lord Chairman, very briefly, our view on Galileo is that, in principle, there is not always the potential, but in terms of funding, which is now of course the crucial point at this juncture, the UK Government is attracted to a private-public partnership approach to funding and competitive procurement, but it is right that this conversation is now within the realms of the EU Finance Ministers who, it is my understanding, discussed the project earlier this week and have agreed that they should continue to do so as and when necessary through the process. I think the final point is just to repeat what I said to my hon friend in the debate in the House of Commons last week when my hon friend said very clearly, "We are clear that the project cannot be carried out at any price. It has to be affordable and it has to be value for money". I apologise to your Lordships that I do not have the *Hansard* reference, but of course I can provide that, and that was my hon friend for Doncaster.

Chairman: Understood, okay. Are there any other points that members would like to raise?

Q40 ***Lord Marlesford:*** Could I ask you, Minister, about something which was of great concern in the original draft Constitutional Treaty, the so-called 'passerelle' clause, because this was seen as a very big change, the making it possible to move from unanimity and, therefore, give up a veto on any aspect of policy by simple unanimity of the Council of Ministers rather than by treaty change. Are there any ways in which the passerelle clause, as included in the new IGC Mandate, differs from the passerelle clause in the Constitution and do you in fact see the passerelle clause as being something which can be raised in further negotiation?

Mr Murphy: The specific point on the passerelle clause is that I know that there has been concern about how this has evolved over recent months, and I was asked again about this in the adjournment debate in Westminster Hall yesterday afternoon on the European Treaty. I may invite Shan to offer her experiences through the processes, the so-called 'focal point', but the fact is that it does not give *carte blanche* for the type of ill-considered and inappropriate changes that Member States and your Lordships, I am sure, may be concerned about on this basis, that the UK and other Member States of course will still have the ability to block any such proposal because it remains an issue of unanimity and we are very, very, very clear about that, and it will remain the subject of unanimity. Perhaps I can ask Shan to add to that.

Ms Morgan: I think the only thing I would add to what the Minister has said is that, when this passerelle clause was negotiated in the 2004 IGC, we were satisfied that there were sufficient safeguards included to protect UK interests, so that was a provision that we and our lawyers were then content with. We will obviously be looking very closely at the wording of the passerelle when the draft Treaty comes out, but, as your Lordship will appreciate, although the IGC Mandate is very detailed, it is not the same as looking at the detail of the legal text of the Treaty, so we will be examining that extremely carefully to make sure that the safeguards that we were confident about in the Constitutional Treaty would remain and that, as the Minister said, we would maintain unanimity on the operation of that process.

Q41 ***Lord Roper:*** In the Mandate, there is an annex which is dealing with the judicial corporation in civil matters and particularly family law which suggests that, when the passerelle operates there, this is on page 28, there will be a red card available to national parliaments and that they can, within six months of the matter going through the Council, object to it and, if that is done, it will not come into effect. Is that exclusive to that particular section where the passerelle is used or does such a red card apply elsewhere?

Mr Murphy: The short answer is yes, but, if I may, I will invite Mr Thomas to add to that.

Mr Thomas: I am not sure that I can add to it, my Lord Chairman. It is confined to that particular part of the Treaty, it is not a general red card.

Q42 ***Lord Marlesford:*** If I may follow that up, my Lord Chairman, it was one of the issues which did cause most concern because really I suppose almost ever since the famous Luxembourg Compromise of January 1996—many decades ago—the change of veto power on any issue other than by Treaty change was seen as a very sensitive matter and there was a worry that the draft Constitution, as it emerged from the 2004 IGC, had greatly weakened what would happen, despite what your colleague said a moment ago. I am very glad to hear that you can negotiate possibly some form of amendment to strengthen this happening and the parliamentary red card issue seems to me a very good way out, as Lord Roper mentioned, and perhaps I could suggest that you might consider extending that to any issue to which the passerelle applied.

Mr Murphy: With your permission, my Lord Chairman, as it is a supplementary, I will return to the Committee on it on the basis, as I made very clear at the outset, that we were going to resist attempts by others to reopen substantial parts of the process and it would be inconsistent for me to contradict what I said at the beginning. My response to that is that I am aware of the issue on the basis that it has been raised with me on a number of occasions already over the past two weeks in my role as Minister for Europe and, with your permission, my Lord Chairman, I will return to the Committee with some thoughts on that.

Chairman: Thank you very much indeed. I will allow one more question and then I think we have to draw this session to a close.

Q43 ***Lord Leach of Fairford:*** Could I go back to the rather broad-brush question at the beginning. I think you said, Minister, earlier that the Government would seek to show that there are substantial differences from the Constitutional Treaty in the new Treaty. I have here, and I will not waste time by reading them out, statements from 13 Heads of EU Governments, two EU Foreign Ministers, the European Parliament, the Commission and Giscard, who of course played such a large part in the Constitution, to the effect that the Treaty is the same as the Constitution, or substantially the same, and they estimate it as 90 to 99 per cent the same with purely cosmetic differences. Does the Government disagree with the judgment of these eminent leaders or are you relying for that statement on the British opt-outs so that what you are really saying is that, so far as Britain is concerned, it is substantially different? I was not quite clear where you were coming from on that.

Mr Murphy: My Lord Chairman, I think there are two points to make in response to that. One is, and I do not think your Lordships would thank me for inviting a prolonged conversation about the kind of interplay between substance and quantity in terms of contents of the respective treaties, but the most substantial point is that for other Member States this Treaty looks significantly different because for them it is significantly different because they have not negotiated, in the way that we have, the series of opt-ins, the legally binding protocols and the extension of the various opt-ins that we already have in place, so that is the reason why. Again, I do not wish to second-guess this whole process and I am not going to second-guess comments by other EU leaders, politicians or spokespeople as I think that takes me into all sorts of dangerous territory, but the general point is that they will be speaking from their perspective on what they signed up to. What we, as a Government, signed up to is substantially different from many of these others who have been quoted and it is a difference in great substance from the previous Constitutional Treaty, but I am aware of these quotes and I am almost able to repeat all 13 of them, so often have I heard them, but it is the case that that is our assessment of it, that they have signed up to something which is substantially different, as they are entirely entitled to do so.

Lord Leach of Fairford: I will take that as a yes. Thank you.

Q44 ***Chairman:*** I think we should draw this to a close now. I want to thank you very much indeed, Minister. Could I just let you know, and you may already know this, that we are meeting with the Portuguese Ambassador on 17 July and, after we have taken evidence from him, we are going to have a discussion in this Committee which we hope will lead to an agreement on a statement from the Committee which we can communicate to the Government and to the House and to all interested parties, including people like Lord Howell of Guildford and others, but certainly around the House to those who are interested, so that we have on record our views on this matter. I think it is very important that we can feel confident, and I think we do feel confident, that the Government will keep us informed during the process, and we discussed that at the very beginning of the session, of what is going on in the IGC and that the less that it is deemed confidential, the better, but anyway we will hope for the best, and of course that, as soon as the text is available, it will be presented to both Houses. In the meantime, I do thank you, on behalf of the Committee, very sincerely for being very comprehensive and frank in your responses to our questions. It has been extraordinarily helpful to us and will certainly help us a great deal when we get down to the job on the 17th, after we have seen the

Ambassador, to come up with a communication which we can present to the Government. May I thank you, Shan Morgan and Mike Thomas for being with us and may I, on behalf of the whole Committee, wish you well, Minister, in your position and particularly well in the conduct of negotiations, on behalf of the UK, with your colleagues in the IGC. Thank you very much indeed.

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