



House of Commons
European Scrutiny Committee

Reforming the European Scrutiny System in the House of Commons

Twenty-fourth Report of Session
2013-14

Volume I

Volume I: Report, together with formal minutes

Volume II: Oral evidence

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The European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No. 143 to examine European Union documents.

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The committee's powers are set out in House of Commons Standing Order No 143. The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at www.parliament.uk.

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Summary

The depth and pace of EU integration, now accelerating with demands for fiscal and political union and economic governance, has demonstrated the need for effective democratic parliamentary scrutiny and accountability of Government at Westminster— all of which affects the UK electorate. Since the UK joined the EEC, and the passing of the European Communities Act 1972, we and our predecessor Committees have been established under the Standing Orders of the House of Commons with the central task of prioritising EU proposals for scrutiny according to their political and legal importance.

This is the first major inquiry into the European scrutiny system in the House of Commons for eight years. We have examined each aspect of our current powers, and also scrutinised the effectiveness of the other components of the system: Departmental Select Committees, European Committees and debates on the floor of the House. We set out full conclusions in Chapter 9.

There is a need for essential reform to make the existing system more coherent and co-ordinated. Our sifting role is valued across the House. But there is more that we could do to look at the impact of new proposals on the electors of the United Kingdom, and our Standing Orders require an urgent update. The evidence we took showed how important it is to ensure that the policy expertise of Departmental Select Committees is applied to these complex questions; we propose that there should be a new requirement to appoint ‘Reporters’ to take the lead within Committees on EU issues, as well as a more co-ordinated approach to the Commission Work Programme.

We were told that the existing European Committee system should be scrapped; we do not agree. The system must be enhanced. The problems with European Committees as currently constituted arise from the fact that new Members are appointed for each document. We argue forcefully for a return to the permanent membership system, new powers and a change of name to reflect the Committees’ core purpose: EU Document Debate Committees.

Given the vital primacy of the United Kingdom Parliament, we also examined how EU business is taken on the floor of the House, and the procedures which apply to it. We set out a series of recommendations about the way debates are scheduled and conducted and put the case for a new session of ‘EU Questions’.

In Chapter 8 of the Report we review our own working practices and the visibility of the House’s scrutiny of the EU in the media. It was disappointing that in the final stages of our inquiry we were thwarted in our efforts to hold two final key evidence sessions: one with the prospective Head of the UK Permanent Representation to the EU (UKRep), Ivan Rogers, and the second with the Chairman of the BBC Trust, Lord Patten of Barnes. In earlier evidence from the BBC, it was clear to us that serious questions need to be answered about how EU issues in general and scrutiny in particular are covered and explained, given the fundamental importance of this scrutiny to the workings of our parliamentary and legislative systems. We will take this forward over the coming months.

As important as all these recommendations are it is now time also to take more radical

steps. Throughout this Report we allude to the fundamental role of national Parliaments – which has been emphasised in speeches this year by the Prime Minister, the Foreign Secretary and the Minister for Europe. It is time to translate this shared view into concrete proposals, and we do so in this Report. Not only do we recommend a strengthening of the scrutiny reserve, we conclude that now is the time to propose the introduction of a form of national veto over EU legislative proposals, and then to explore the mechanics of disapplication of parts of existing EU obligations, notwithstanding the European Communities Act 1972.

1 Introduction

The importance of European scrutiny and the reasons for this Inquiry

1. European Union (EU) legislation and EU policy-making has a profound impact on the United Kingdom, and lies at the heart of much of United Kingdom legislation by virtue of the European Communities Act 1972. Since 2002, when our predecessors published their most recent report on European Scrutiny, there have been the European Union (Amendment) Act 2008, the entry into force of the Lisbon Treaty in 2009, and other momentous events in Europe, inside and outside the eurozone, which have had a profound impact on the United Kingdom and on Europe as a whole.

2. These events have been accompanied by the European Commission's proposals for greater integration, such as *A blueprint for a deep and genuine economic and monetary union*,¹ which commented:

Interparliamentary cooperation as such does not, however, ensure democratic legitimacy for EU decisions. That requires a parliamentary assembly representatively composed in which votes can be taken. The European Parliament, and only it, is that assembly for the EU and hence for the euro.²

3. We recommended this Communication for debate on the floor of the House in January 2013,³ alongside the President of the European Council's Report *Towards a genuine Economic and Monetary Union*. The debate did not happen until 18 June, and only after strong representations by the Committee, including a letter to the Prime Minister. At the end of the debate the House agreed a resolution which concluded:

that [this House notes that] recent European Treaties and protocols have emphasised the role of national parliaments throughout the European Union as the foundation of democratic legitimacy and accountability; and believes that this role is the pivot upon which democracy in the United Kingdom must be based on behalf of the voters in every constituency.

4. The Prime Minister's speech at the Bloomberg offices in London on 23 January 2013, which was followed by proposals by the Foreign Secretary⁴ and the Minister for Europe⁵ in their speeches in Germany in May 2013, set out the Government's thinking on democratic accountability: "It is national parliaments, which are, and will remain, the true source of real democratic legitimacy and accountability in the EU." It is to be recalled that in the course of his opinion on Factortame (No. 2), Lord Bridge said that "whatever limitation of

1 COM(2012) 777 final/2

2 COM(2012) 777 final/2, section 4.1

3 Twenty-eighth Report of Session 2012–13, HC 86-xxviii

4 Speech delivered on 31 May 2013 at the Königswinter Conference, *Britain and Germany: partners in reform*, www.gov.uk.

5 Speech delivered at the WDR Europe Forum in Berlin on 16 May 2013, *Europe's new balance – necessary EU reforms*, www.gov.uk.

its sovereignty Parliament accepted when it enacted the European Communities Act 1972 was entirely voluntary.”⁶

5. The increased interest in democratic legitimacy, scrutiny and accountability has been a great focus of COSAC,⁷ the Conference of the Chairs of the National Parliamentary European Committees throughout the 28 Member States. At the most recent plenary meeting of COSAC, held in Vilnius in October 2013, the United Kingdom delegation (on the initiative of the Committee Chairman) proposed amendments to the Conclusions to include a reference to “the fundamental role of national Parliaments” in a call for a full debate on the strengthening of the democratic legitimacy of the Union, which was agreed to without a vote.⁸ Recent COSAC debates have shown evidence of concern among national parliaments about their relationship with the EU, a corresponding interest in developing methods of more effective scrutiny and have included frank exchanges about the current limited role of national parliaments under the Treaties and options for Treaty change.⁹

6. Against this background, and the possibility of an in/out referendum on EU membership within the next four years, it is timely that full attention should be given both inside Parliament and outside, and in the media, to the role of the European Scrutiny Committee and wider scrutiny system in the House of Commons, to reflect on the process and to propose improvements in the interests of Parliament itself, the electors who are affected by European legislation, issues and policies, and in the national interest.

Discussions on scrutiny since 2005

7. Most recently the Modernisation Committee reported on the scrutiny system in March 2005,¹⁰ but it was not until over two years later, on 25 October 2007, that the then Leader of the House accepted a proposal from the European Scrutiny Committee to present specific proposals to improve the scrutiny process, stating that “We will seek to sort this matter out within three months of today”.¹¹ The scale of the proposals tabled for consideration on the floor of the House three and a half months later, on 7 February 2008, was relatively modest. They included renaming European Standing Committees as European Committees, making ad hoc membership of those Committees a permanent feature, specifying that two members of the European Scrutiny Committee and the most relevant departmental select committee should be appointed to them “where practicable” and making provision for introductory statements by a member of the Scrutiny Committee. The most radical change was the result of an amendment tabled by the then Shadow Leader of the House (Mrs Theresa May MP) to provide that “the [European Scrutiny] Committee shall sit in public unless it determines otherwise” to consider

6 [1991] 1 AC 658, 603

7 Formally, the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.

8 Conclusions of the L COSAC, para 3.4, available at www.cosac.eu.

9 See, for example, the paper *What should be the position of National Parliaments in the construction of a European Political Union*, Claude Bartolone, President of the French National Assembly, Policy Paper no. 291, www.robert-schuman.eu.

10 Select Committee on Modernisation of the House of Commons (referred to in this Report as ‘the Modernisation Committee’), Second Report of Session 2004–05, *Scrutiny of European Business*, HC 465-I.

11 HC Deb, col. 443

documents.¹² That decision was reversed in the House on 12 November 2008 by 201 votes to 195 (see paragraph 269 for our consideration of the merits of public deliberative sittings).

8. This was a period when there was no consensus for radical change of the House's scrutiny system. Perhaps this experience is one of the reasons why the following years have seen no significant proposals for change come to the floor of the House, despite first the advent of the Lisbon Treaty and then the economic crisis. The provisions introduced by the Treaty (Reasoned Opinions on Subsidiarity and extension of the United Kingdom's opt-in to EU policing and criminal law measures) have therefore been, in effect, bolted on to the existing document-based system, and our efforts to agree the wording of new Standing Orders and a scrutiny reserve with the Government stalled.¹³ The current definition of 'European Union document' in Standing Order No. 143 and the scrutiny reserve resolution both date from November 1998 (well before the Lisbon Treaty took effect)—clearly a highly undesirable state of affairs.¹⁴

Discussions since the 2010 General Election

9. In January 2011 the Minister for Europe issued a Written Ministerial Statement on *EU Business: Enhancing Parliamentary Scrutiny*. This set out measures relating to scrutiny of EU justice and home affairs measures and concluded:

The Government are committed to strengthening its engagement with Parliament on all European business as part of our wider work to reduce the democratic deficit over EU matters. It will review the arrangements on EU issues in consultation with Parliament, and make a further announcement in due course.¹⁵

10. A letter from the Minister to the Chairman of the Liaison Committee in September that year referred back to this Statement, stating that:

I would be open to explore with Parliament whether any changes need to be made to scrutiny, given the changing nature of the EU.

I am fully aware that Government does not own this process, but I am nevertheless keen—given the importance of scrutiny in transparency and development of Government policy—to work with Parliament to explore possible changes in the way it scrutinises Government on EU day-to-day work and not just Treaty change.

The Government has no fixed ideas at present but the questions we are asking ourselves include: is the level of visibility of EU business in Parliament sufficient? How can we involve more parliamentarians on issues with an EU dimension? Are Parliament's views being made clear at the most appropriate time for the EU to hear them and for Ministers to be able to act on them?

¹² CJ (2007–08) 188

¹³ Sixth Report of Session 2009–10, *The Work of the Committee in 2008–09*, HC 267

¹⁴ CJ (1997–98) 812

¹⁵ HC Deb, 20 January 2011, col. 52WS

If Parliament wishes to consider this further, I would be happy to reflect with you on these questions in the autumn.¹⁶

11. Following further exchanges of letters with the Liaison Committee, in December 2011 a letter from the Minister for Europe to the Chair of the Procedure Committee set out that the “Government was considering the response to [the Procedure Committee’s Report on Reasoned Opinions on Subsidiarity] along with the wider review of European scrutiny”. The fact that this review was still “on-going” in July 2012 was given as the reason for the Government taking a year to respond to the Procedure Committee’s Report.¹⁷

12. Given the fundamental questions we raise at the beginning of the Report, this stagnation was one of the reasons we launched our inquiry in June 2012. “It is Parliament that owns the scrutiny process”, as the Minister for Europe stressed when he gave oral evidence.¹⁸ In fact, when we took oral evidence from him for a second time in connection with the inquiry, he told us:

We have very much been waiting for this Committee’s Report to focus minds and test the water in Parliament to see whether there is an appetite going beyond those who already take a keen interest in EU matters for the types of reforms we are now discussing.¹⁹

13. Our objectives for the inquiry, and this Report, are to take a considered view on whether the system as a whole — the European Scrutiny Committee, Departmental Select Committees, European Committees, and debates on the floor of the House—works in a coherent way and matches the essential democratic expectations of Members and the public. We also take a wider view and comment on what the future purpose of scrutiny should be, given the actual and prospective changes in the EU following the financial crisis.

14. Under Standing Orders our Committee conducts political and legal analysis not just of individual documents but also wider and more profound related issues, such as the 2014 block opt-out of pre-Lisbon criminal law and policing measures, the Treaty on Stability, Co-ordination and Governance and Parliamentary Sovereignty.²⁰ As we note later, we believe it is time not just to enhance this role, but also to develop a deeper and wider engagement with Departmental Select Committees.

15. We held thirteen oral evidence sessions, and received written evidence from a range of witnesses. Members and other stakeholders were given the opportunity to take part in an online survey we conducted about the scrutiny process. While the response rate to the survey of Members was disappointingly low²¹— which is perhaps indicative of the lack of interest in the details of EU policy-making within the House— some of the responses were nonetheless revealing.

16 Letter dated 7 September 2011, available via the Liaison Committee website at www.parliament.uk

17 Procedure Committee, First Special Report, Session 2012–13, *Reasoned Opinions on Subsidiarity under the Lisbon Treaty: Government Response to the Committee’s Fourth Report of Session 2010–12*, HC 712. See also para 162.

18 Q 1

19 Q 515

20 See para 45.

21 41 Members responded.

16. Part of the inquiry was a visit to Brussels and The Hague where we spoke to, among others, the President of the European Council Herman Van Rompuy, Vice-President of the Commission Olli Rehn and the European Affairs Committee of the Dutch Parliament's Tweede Kamer (lower chamber). We also met the then UK Permanent Representative to the EU, Sir Jon Cunliffe, for an informal meeting in Brussels, having already held an oral evidence session with him.

17. During the inquiry we also had the opportunity to discuss these issues at the regular COSAC meetings and with our colleagues in the House of Lords and UK MEPs. We held a useful informal meeting via video-conference with members of the European and External Relations Committee of the Scottish Parliament and EU Reporters from its subject committees.

18. On the issue of “visibility”, we regarded the role of the media, and the provision of information to the public, as an important part of the inquiry; we therefore took evidence from a number of media organisations, including the BBC (see Chapter 8).

19. While our duties are set by the House in Standing Orders, comparisons with other Member States provide important context. We therefore produced (with colleagues across national parliaments of the EU, the National Parliament Representatives in Brussels and the House of Commons Library) a comparisons Table, which is annexed to this Report.

20. We are very grateful to all those who contributed to the inquiry.

How the House of Commons scrutiny process works

21. The scrutiny process in the House of Commons begins with our work as the European Scrutiny Committee, sifting deposited documents²² for their legal and political importance. We consider proposals quickly—often less than a week after receiving the Government's Explanatory Memorandum (EM). We report substantively on around half of the documents,²³ producing a Report which summarises the proposal, the Government's views and our conclusions. We may clear a document from scrutiny, ask for further information, refer it for debate, or possibly seek an Opinion under Standing Order No. 143(11) from a Departmental Select Committee. But this is not all we do: we regard our role as sifting plus; the “plus” coming from Standing Order No. 143(1)(c) which states that we are “to consider any issue arising upon any such document or group of documents, or related matters”; we therefore on occasion take oral evidence on the principles behind a particular proposal, or more generic issues, which may lead to a separate and more detailed Report.

22. There are also three ad hoc European Committees, which meet to debate those documents which we have referred. The most important documents may be debated on the floor of the House, but as we have no right of direct referral we are reluctantly obliged to rely on the Government finding time for a debate. Under the scrutiny reserve resolution (a resolution of the House, the current version of which dates from November 1998) “No

²² See Chapter 3.

²³ Financial year 2012–13:52% [506 out of 980]; 2011–12:57% [643 out of 1,138]; 2010–11:45% [454 out of 1,013]; 2009–10:45% [416 out of 915]; 2008–09:47% [443 out of 941] [statistics in the House of Commons Commission Annual Report 2012–13, HC 595, Annex 1, which are also used for the Table overleaf].

Minister of the Crown should give agreement in the Council or in the European Council”, until the document has been cleared, either by an ESC decision or by the House agreeing a Resolution following a debate in European Committee or on the floor, unless the proposal is “confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed”, or if the Minister decides that “for special reasons agreement should be given” (in which case the reasons “in every such case” should be explained promptly to the Committee and the House, if the document awaits consideration there).

Activity levels between financial years 2006–07 and 2012–13

Financial year	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13
EU Documents scrutinised	1,045	1,044	941	915	1,013	1,138	980
Reported as legally/politically important	484	472	443	416	454	643	506
Debates in European Committee	42	34	32	33	40	35	38
Debates on the floor of the House²⁴	6	3	5	1	6	10	12

23. In parallel with this sifting/clearance process, the House’s Departmental Select Committees may inquire into relevant EU policy and legislation (indeed, it is one of their ‘core tasks’). The Foreign Affairs Committee, with its remit covering the expenditure, administration and policy of the FCO, recently conducted an inquiry into *The future of the European Union: UK Government policy*.²⁵ However, outside the formal remit of the Foreign Affairs Committee, or when the ESC asks for a formal Opinion, Departmental Select Committees are not obliged to consider particular documents or proposals.

24. Some evidence we received commented that there were weaknesses in the current process in the House of Commons. The European Conservatives and Reformists Group in the European Parliament stated that:

We work on many proposals of great economic importance to the UK where a more detailed response from one of the Commons Select Committees would be welcome ... We also observe that the transposition of European legislation is not systematically examined by the House of Commons ... we do not feel that the House of Commons scrutiny process for EU legislation is well understood.²⁶

24 Since the Lisbon Treaty, there are now debates on Reasoned Opinions and opt-ins on the floor of the House (see para 150), which are included in these statistics.

25 First Report of Session 2013–14, HC 87-I

26 Ev w3, paras 9, 10 and 13

25. The Liberal Democrat Parliamentary Party Committee on International Affairs commented “despite the hard work and dedication of the Commons European Scrutiny Committee (ESC), the current system of Scrutiny of European Affairs in the House of Commons in particular, is in need of serious reform.”²⁷

26. Other evidence was more positive, particularly about the sifting role of the ESC. Dr Katrin Auel of the University of Vienna set out her assessment as follows:

When it comes to the analysis of documents, the filter function of the European Scrutiny Committee or the function of holding the Government accountable ex-post, I would rank the House of Commons quite highly compared with other systems. I would also rank it quite highly, or very highly, on the transparency of its proceedings in the Committee and the European committees. When it comes to influencing the Government position, I would probably put it somewhere in the middle because obviously the in-depth analysis of the European Scrutiny Committee raises important points that will be taken up and considered by the Government, but I think that here we will find that other Parliaments have more influence, especially when it comes to the immediate impact regarding European Council meetings.²⁸

27. In this Report we examine the different components of the process in turn: starting with our role and remit, before considering debates on the floor of the House, the work of Departmental Select Committees and European Committees. We conclude with a section about the visibility of scrutiny and the media. We recognise that many of these recommendations will need to be further considered by other Committees of this House, in particular the Procedure Committee and the Liaison Committee, and look forward to working with our colleagues to bring changes both to Standing Orders and working practices into effect.

The House of Lords European Union Committee

28. The European Union Committee of the House of Lords functions in an entirely different context within its House as there is no separate Departmental Select Committee system. Its work was praised in the evidence we received, including that from the FCO, which commented that from “a Government perspective, we see strengths in the Lords’ system of sifting documents by the Chairman and consequent consideration by the six Sub-Committees”.²⁹

29. The Government continued that the systems of the two Houses had “many—often complementary—strengths” and that it is “important to maintain the strengths of the different approaches used.”³⁰ The need to maintain complementarity was also raised by Dr Julie Smith, Department of Politics and International Studies, Cambridge University, who said that the “advantage of the UK system is precisely that you have the depth of the Lords scrutiny and the breadth of the House of Commons system”³¹ and Chris Heaton-Harris

27 Ev w19, para 5

28 Q 116

29 Ev w6, para 7. See also Ev w3, para 12 [European Conservatives and Reformists Group of the European Parliament].

30 Ev w6, para 6

31 Q 136

MP and Robert Broadhurst, whose memorandum referred to the comprehensive scrutiny system of the House of Commons as a “good complement to the *modus operandi* of the EU scrutiny system in the House of Lords, which tends to focus on a select number of EU documents each year.”³²

30. Our predecessor Committees, in their Reports on the scrutiny system, subscribed fully to the principle of complementarity,³³ as do we. We maintain good informal relationships with our Lords colleagues while respecting our different competences, as well as the distinctions between the elected and non-elected natures of our systems. Some aspects of this Report, particularly those relating to document deposit, have bicameral implications; we will work closely with the House of Lords Committee in considering how to take these forward. In that context, we note that the Lords Committee is currently conducting an inquiry into the role of national parliaments in the EU, and is expected to report next year.

Comparisons across the European Union

31. Despite the fact that the key task—holding Governments to account for their decisions in Brussels—is essentially the same, Parliaments across the EU approach scrutiny in significantly different ways. Much of this tends to lie in the context of their own domestic constitutional and political systems, and their history. As well as producing the comparative Table on the distinctions between national parliaments, we held meetings with our colleagues in the Tweede Kamer in the Netherlands and the Oireachtas in Ireland, systems which have been reformed over the past few years; we also benefited from the wider perspective of three academics currently involved in a major comparative study of scrutiny processes across the EU, known as OPAL (Observatory of Parliaments after the Lisbon Treaty).

32. The classic categorisation is between ‘document-based’ and ‘mandating’ systems, and the Minister for Europe presented it to us as something of an either/or choice — at least in the House of Commons context: “The approach has to be one or the other. I do not think it would be feasible to have both the current document-driven system and a mandate system in addition.”³⁴ However, we were told by other witnesses that the distinction is a false dichotomy. Dr Katrin Auel said that “I know that this has become sort of the mainstream distinction ... but I do not find it very helpful”³⁵ and Dr Ariella Huff of Cambridge University referred to it as “a little bit simple ... Most systems, even the mandating ones, operate often on the basis of documents – they do not dream things up.”³⁶

33. As can be seen from Annex 2, almost all systems across the EU are indeed based on documents in some form or another, and most include a degree of influence, sanction or mandate on the Government, though this is much stronger in some systems (for example

32 Ev w12, para 2

33 Thirtieth Report of the European Scrutiny Committee, Session 2001–02, *European Scrutiny in the Commons*, HC 152-xxx, para 19; Twenty-seventh Report of the Select Committee on European Legislation, Session 1995–96, *The Scrutiny of European Business*, HC 51-xxvii, para 61

34 Q 529

35 Q 113

36 Q 115

Denmark) than others.³⁷ Even in these so-called ‘strong’ systems, there are limits to influence that arise from the nature of the EU itself, and in particular the operation of Qualified Majority Voting (QMV). As Dr Julie Smith put it, “It does not matter how wonderful the mandate is, it does not matter how wonderful the scrutiny process is, if a national government is outvoted, that is the end of the story.”³⁸

34. The increase in the scope of Qualified Majority Voting—and the accompanying change in the nature and significance of the decision-making processes in the Council and Coreper (see paragraphs 80 and 81)—is highly significant for parliamentary scrutiny. In this context, it is clear that any EU scrutiny system is necessarily a hybrid of document-based and mandating processes. The challenge is to ensure that both aspects—that is, which documents are being scrutinised and the nature and effect of parliamentary influence—are both carefully considered.³⁹

The National Parliament Office

35. Our work and that of the Departmental Select Committees has been assisted since October 1999 by parliamentary officials from Westminster working in Brussels at the UK National Parliament Office (NPO). There are currently two officials representing the House of Commons and one representing the House of Lords. They form part of an informal network of representatives from nearly all EU Member States’ parliaments, who liaise with the European institutions, with government representatives in Brussels and with each other to provide invaluable briefing, advice and support.

36. The creation of the NPO was originally recommended by a Modernisation Committee Report in 1998⁴⁰ and it continues to prove its worth, particularly given the trend of increased co-operation between national parliaments and the new powers provided under the Lisbon Treaty. Dr Julie Smith noted that the representatives are “incredibly well informed and spend a lot of time talking to their opposite numbers representing national parliaments from the other member states”,⁴¹ while Gisela Stuart MP recalled that the briefings she had received in the past from the Office were “gold dust”.⁴²

37. The National Parliament Office assists the work of the House of Commons in other ways, including:

- explaining and promoting the work of the House on EU matters and fostering personal contacts with MEPs and officials in the EU institutions;
- providing support to delegations visiting Brussels and to inter-parliamentary meetings elsewhere in the EU, including COSAC and the EU Conference of Speakers;

37 Ev w5 [David Millar OBE]; Ev w13, para 12 [Chris Heaton-Harris MP; Robert Broadhurst]; Q 113 [Dr Auel]

38 Q 124

39 As Dr Katrin Auel put it “‘document base’ refers to the object of the scrutiny, while mandating seems to refer more to the legally binding character of the parliamentary opinion” [Q 113].

40 Modernisation Committee, Seventh Report of Session 1997–98, *The Scrutiny of European Business*, HC 791, para 43

41 Q 119

42 Q 267

- assisting in the development and negotiation of new fora for inter-parliamentary cooperation, most recently in the fields of Common Foreign and Security and Common Security and Defence Policy, and EU economic governance;
- producing a weekly briefing document primarily for the European Scrutiny Committee, but which is also made available to all Departmental Select Committees, known as the *Brussels Bulletin*, as well as occasional subject-specific policy papers providing upstream information on EU developments in different policy fields; and
- circulating, for a Brussels readership, a weekly summary of *Commons European Business*, including the work of the European Scrutiny Committee, Select Committees, European Committees and business taken on the floor of the House.

38. When giving oral evidence to us the Minister for Europe referred to the staffing levels of the NPO.⁴³ Although he focussed on the larger establishment of the Brussels office of the Bundestag—“If you look at how the Germans do this, the Bundestag and Bundesrat have about 18 people representing them in Brussels; the two Houses at Westminster have three”—we note that the size of the UK office is similar to that of the Danish, Dutch and French Parliaments, and larger than most others.⁴⁴ **We believe that the House is very well served by the current level of UK representation in the National Parliament Office in Brussels. We see no reason, particularly at a time of budgetary restraint, substantially to increase the size of the NPO, though we note that in the lead-up to and during the UK Presidency of the EU in the second half of 2017 there may be a need for a modest increase in its staffing.**

39. **In our view there is scope for increasing, and a need to increase, access by other Members of the House to the valuable material the NPO provides, particularly the *Brussels Bulletin*, and we will liaise with the NPO in order to take this forward.**

43 Q 511

44 The delegation from the German Parliament consists of seven officials from the Bundestag, one from the Bundesrat and a number of political group staff sent by the parties.

2 The role of the European Scrutiny Committee: examining merits?

40. When this Committee reviews deposited documents it is assessing their “legal and political importance”. This test is set out in Standing Order No. 143(1):

There shall be a select committee, to be called the European Scrutiny Committee, to examine European Union documents and

(a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

(b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

(c) to consider any issue arising upon any such document or group of documents, or related matters.

41. It is the same, in essence, as that recommended in the Foster Committee Report 40 years ago:

The object of the Committee will be to inform the House as to any proposals of legal or political importance and to make recommendations as to their further consideration. Its task would not be to debate the reasons for or against a proposal but to give the House the fullest information as to why it considered the particular proposal of importance and to point out the matter of principle or policy which it affects and the changes to UK law involved.⁴⁵

42. This focus on legal importance, and in particular on treaty base, was ahead of its time. Some of the new powers given to national parliaments, for example by Protocol (No. 2) of the Lisbon Treaty, require legal expertise to deploy and we are well-resourced to deal with them, both through the experience acquired by Members of the Committee and through our staff, in particular the two Legal Advisers.⁴⁶ This has served us particularly well in producing Reasoned Opinions relating to breaches of the principle of subsidiarity.⁴⁷

43. In making our judgement on the legal and political importance of proposals we take account of any impact assessment prepared by the Government (which will be referred to in the Explanatory Memorandum) and also impact assessments prepared by the Commission.

44. The concept of political importance can and does blur in practice into wider discussions of the advantages and disadvantages of, or the principles behind, a particular

45 Select Committee on European Community Secondary Legislation, Second Report of Session 1972–73, HC 463-I, para 69

46 The ESC is served by Counsel for European Legislation and Assistant Counsel for European Legislation. Both also advise other Members and Committees of the House on EU law.

47 See Glossary.

proposal. Several witnesses proposed that this Committee should explicitly become a “merits” Committee with a role—as it was put by Chris Heaton-Harris MP and Robert Broadhurst—to adopt a “clear political opinion on the rights and wrongs of EU proposals”.⁴⁸

45. We noted earlier in this Report that the part of our Standing Order which gives us power “to consider any issue arising upon any such document or group of documents, or related matters” is significant. It already extends our role from merely a sift to one of analysis of issues and principles emerging from the wide variety of documents we receive and, indeed, EU developments more generally. Under this provision in our Standing Order we have conducted over the last few years a number of discrete, in-depth inquiries, including into the 2014 Block-opt out of pre-Lisbon criminal law and policing measures,⁴⁹ the Treaty on Stability, Coordination and Governance;⁵⁰ the European Union Bill;⁵¹ and Parliamentary Sovereignty.⁵²

46. Under Standing Order No. 143(1)(c) we have the flexibility to report on why particular documents, or groups of documents, are politically important. Clearly these powers already amount to ‘sifting plus’. The workload created by a detailed consideration of the political merits of all the 1,000 documents a year which we scrutinise would risk overburdening the process—and would overlap with the work of Departmental Select Committees—but we see a need to build on our existing powers to make the scrutiny process as a whole more coherent and make a series of recommendations to achieve this. We will also in future define our assessment of legal and political importance as including in particular our assessment of its political and legal *impact* on the United Kingdom, continuing to draw on the impact assessments prepared both by the Government and by the Commission.

48 See Ev w13, para 9 [Chris Heaton-Harris MP; Robert Broadhurst]; Q 286 [Andrea Leadsom MP].

49 Twenty-first Report of Session 2013–14, HC 683

50 Sixty-second Report of Session 2010–12, HC 1817

51 Fifteenth Report of Session 2010–12, HC 682

52 Tenth Report of Session 2010–12, HC 633

3 The role of the European Scrutiny Committee: stages of scrutiny

Introduction

47. Our current sift for legal and political importance is facilitated by the support we receive from our staff, which is the largest support team for a Select Committee of the House of Commons and includes in particular four experienced Clerk Advisers and two Legal Advisers.

48. The scale of the task is considerable and begins in each case with a document's deposit in Parliament (simultaneously for both the House of Commons and the House of Lords). While the House of Lords Standing Orders have been updated since the Lisbon Treaty our Standing Order No. 143 has not. Under this Standing Order the Government is obliged to deposit:

- i. any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii. any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii. any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv. any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v. any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation; and
- vi. any other document relating to European Union matters deposited in the House by a Minister of the Crown.⁵³

49. Documents must be deposited by the Government within two days of the document being circulated by the Council secretariat; an Explanatory Memorandum, which sets out the Government's view on the proposal, follows and must be received no later than ten working days after the deposit of the document. Supplementary Explanatory Memoranda

53 The equivalent provision for the House of Lords EU Committee is "The expression 'European Union document' includes in particular: (a) a document submitted by an institution of the European Union to another institution and put by either into the public domain; (b) a draft legislative act or a proposal for amendment of such an act; and (c) a draft decision relating to the Common Foreign and Security Policy of the European Union under Title V of the Treaty on European Union".

may be produced in certain circumstances, for example if proposals change substantively during negotiations.⁵⁴

Committee consideration of documents

50. As a Committee we consider at least a summary of all of the 1,000 documents or so deposited each year. We decide:

- whether the document is legally and/or politically important (in which case it will be the subject of a chapter of our weekly Report);
- whether it should be cleared or held under scrutiny, with further information requested of the Government;
- whether it should be recommended for debate, either in European Committee (directly referred by the ESC) or on the floor of the House (if the Government so agrees); or
- whether its relative unimportance means it can be cleared without a substantive Report.

51. The principal strengths of the current sift are its breadth, speed and the Committee's direct involvement in the process. It means that we have, as elected Members, the opportunity to identify quickly measures which should be examined more closely, in order to inform both the House and the wider electorate.

Explanatory Memoranda

52. One of the other key strengths is the provision, and public availability, of the Government's Explanatory Memoranda (EMs). EMs have the potential to be excellent summaries of the proposals and the Government's position on them. Many fulfil this potential, and there is work ongoing across Government, led by the Cabinet Office and the FCO, to provide better guidance to staff in individual Departments.⁵⁵

53. EMs are usually written by civil servants leading in a particular policy area who may not have experience of producing them, and we are grateful for the work that is done both to produce EMs to an exacting timetable and to develop and share best practice. Despite these efforts some EMs fall short of the standards required and fail properly to describe what the proposal is about, analyse the legal implications or set out the Government's policy position clearly. Problems are also caused by EMs arriving late or being incomplete.

54. Explanatory Memoranda are the Government's evidence to Parliament, and are signed off in each case by a Minister. We expect Ministers in all Departments to ensure that staff are supported and trained to produce high-quality EMs, and also to maintain strict systems of quality control and oversight, including by Departmental lawyers.

⁵⁴ See paras 78 and 110.

⁵⁵ Explanatory Memoranda are available at <http://europeanmemoranda.cabinetoffice.gov.uk/>

The sift

55. We heard criticism that the current system was “too slow, bureaucratic and rigid”;⁵⁶ one former Member of the Committee, Richard Bacon MP, told us that the sift “did feel like a process that was there for its own sake, and I was not clear what it was influencing on the outside.”⁵⁷

56. It is indeed true that the volume of documents is a challenge both for our own working practices and for the Government, given that each depositable document also requires an EM. James Brokenshire, Minister for Crime and Security at the Home Office, remarked that less than half of the deposited documents were the subject of a Report chapter.⁵⁸ The Minister for Europe told us that “An awful lot of paper flows backwards and forwards. It imposes a huge workload on the Committee, and the Committee deals with it diligently.”⁵⁹

57. The FCO suggested in its written evidence that “Government and the two Scrutiny Committees might look at what scope there is to streamline existing processes to reduce the burdens whilst still meeting its objectives of better scrutiny, accountability and transparency”.⁶⁰ Other witnesses made the same point, for example the Liberal Democrat PPC on International Affairs.⁶¹

58. The FCO memorandum also stated that the number of “documents that the Committees scrutinise has increased over the past couple of years”:

The FCO, for example, deposited 133 Explanatory Memoranda (EMs) in 2010, and 167 in 2011, an increase of 25% ... Across Government, records show that in 2010, 980 EMs were submitted and in 2011 there were 1,128 representing a 15% increase in volume across all departments.⁶²

59. The figures published in the House of Commons Commission Annual Reports show a significant variation over time, rather than a general upward trend—indeed, the Government’s response to this Committee’s 2002 report on the scrutiny system suggested that at that time the Government deposited “around 1,300 documents a year in the House”.⁶³

56 Ev w21, para 12 [Liberal Democrat Parliamentary Party Committee on International Affairs]

57 Q 312

58 Q 66, for statistics on this point see footnote 23.

59 Q 511

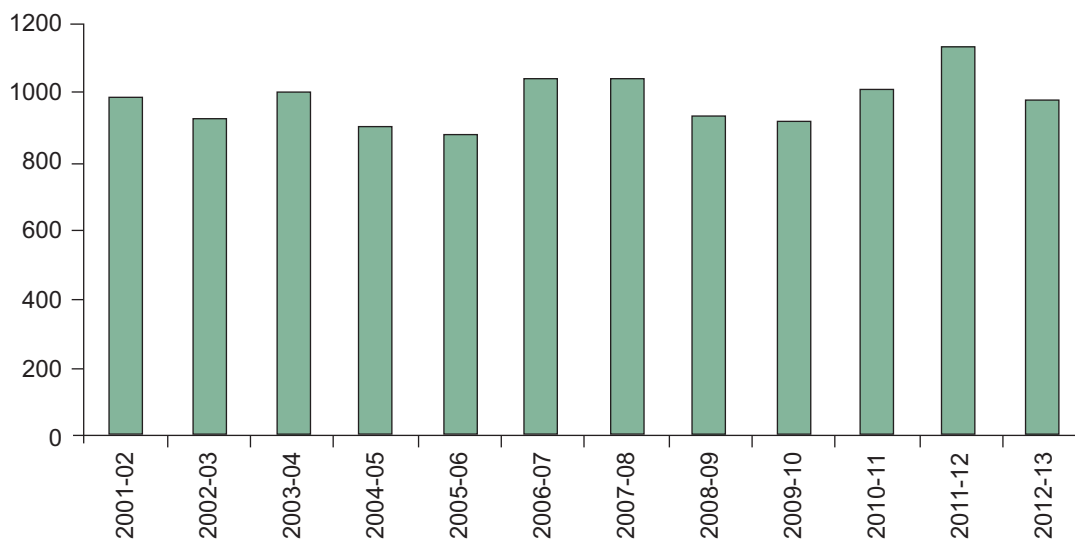
60 Ev w9, para 35

61 Ev w21, para 12

62 Ev w9, para 34

63 Second Special Report of Session 2001–02, HC 1256, para 9. Successive House of Commons Commission Annual Reports are available on the www.parliament.uk website.

Documents deposited for scrutiny 2001–2013 (financial years)



60. There are already a series of classes of documents which the Government and Parliament have agreed to be subject to a shorter EM, and which are routinely cleared.⁶⁴ Other documents are subject to a non-deposit agreement.⁶⁵ We remain open to suggestions about how the existing system could be streamlined. When we questioned the Minister for Europe on this point he proposed that there should be some kind of “triage system” for EMs, “where the Government and Parliament could agree to distinguish between matters that were important and those that were not”.⁶⁶ He also agreed that it was “very important” to have clear, simple rules that everybody could understand, given the number of staff across the civil service who have to make decisions on deposit and prepare Explanatory Memoranda.⁶⁷

61. We would be willing to consider further refinements to the deposit system and requests for particular classes of document to be subject routinely to non-deposit or a shorter EM, but in our view a subjective, document-by-document, real-time triage system would not be appropriate, particularly given the bicameral nature of deposit. We ask each Government Department to set out in the response to this Report specific categories of documents which it seeks to be either subject to non-deposit, or shorter EMs, so that we (and the House of Lords European Union Committee) can consider best how to

64 Anti-dumping cases; Extension of time or renewal of agreement; Follow-up to international agreement; Import arrangements with third countries; Staff matters; Tariff quotas; Transfer of appropriations; Consolidation; Derogations; Routine amendment to existing legislation; Routine Joint Action amendments to Joint Actions; CFSP Common Position.

65 Community positions on rules of procedure for various Councils and Committees, including those established under Association Agreements; Proposals to extend Common Positions imposing sanctions (without making substantive changes) in pursuance of UN Security Council resolutions; Proposals for making minor changes to lists of people organisations subject to restrictive provisions in existing measures; Draft Council decisions relating to decisions already made in Association Councils or Committees; Reappointment of members to EU organisations; Miscellaneous Post Lisbon Article 37; and External Auditors of EU Member States National Central Banks.

66 Q 35

67 Q 36

balance the need to avoid strictly unnecessary work with our desire to maintain the rigour and the breadth of the scrutiny system.

The scope of document deposit

62. We noted in the previous section that around 1,000 documents are deposited in the UK Parliament each year. Responses to a recent questionnaire by COSAC⁶⁸ show that 19 out of 40 Parliaments/Chambers receive more than 500 EU documents annually.⁶⁹ We were told that the scope of deposit in the UK is quite limited. Dr Katrin Auel, for example, stated that the:

UK Parliament is among a few [national parliaments] who do not have regular access to *limité*/restricted; some Parliaments even have access to confidential documents. I think by now there are a number of Parliaments who have greater access to documents than the UK Parliament does. This is also true when it comes to COREPER and Council working group documents that I have learned the UK Houses of Parliament are not automatically sent but which most other Parliaments will receive automatically.⁷⁰

63. This, we think, is a significant comparison, borne out by informal discussions we have had at COSAC, and one which we take forward in later recommendations.

64. The Bundestag, for example, has recently reformed and strengthened its already comprehensive access to documents, so that it now receives, as well as documents from the European institutions:

documents and information on the Federal Government's initiatives, opinions, contributions to consultations, draft programmes and explanations for institutions of the European Union, for informal ministerial meetings, for euro summits and for the Eurogroup and comparable institutions that meet on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union,

relevant initiatives, opinions, contributions to consultations and explanations from governments of Member States of the European Union,

relevant initiatives, opinions, contributions to consultations and explanations from the Bundesrat and the Länder, and

coordinated instructions for the German representative on the Committee of Permanent Representatives.⁷¹

68 COSAC, Seventeenth Bi-annual Report, *Developments in EU Procedures and Practices Relevant to Parliamentary Scrutiny*, April 2012, available at www.cosac.eu

69 Graph 1 of the bi-annual Report.

70 Q 129

71 http://www.bundestag.de/htdocs_e/bundestag/europe/ipex/EUZBBG_Juli_2013_EN.pdf

65. In this Chapter we first set out the different stages of the EU legislative process, and the level of scrutiny which applies, before concluding with some more general comments, conclusions and recommendations.

The early stages of policy formulation

66. The potential disadvantages of relying on documents as the trigger for scrutiny were pointed out to us by several witnesses. We were advised that scrutiny at source, at the earliest stages of policy development, is key, and we have been aware of this ourselves for some time. Dr Julie Smith observed “Why are [there] so many of them [lobbyists] in Brussels? Because they want to shape the agenda”.⁷² Sir Jon Cunliffe, then the UK’s Permanent Representative to the EU, agreed that “everyone knows, much of Europe is about influencing early on in the process rather than at the trilogue stage”⁷³ and Dr Auel told us “You will find that the most powerful parliaments in terms of those that are considered to be the most influential have now shifted the scrutiny to a very early stage.”⁷⁴ The Minister for Europe linked this to the concept of ‘upstream’ engagement,⁷⁵ and referred to it in particular in the context of the work of Departmental Select Committees, which we consider later in this Report. Chris Bryant MP pointed out that early engagement by Parliament was also an effective way of influencing the Government—as it required Ministers and their officials to think through the issues more carefully in advance of Council meetings.⁷⁶

67. Early discussions within the institutions may then lead to the publication of Green Papers and White Papers by the Commission, which are deposited and therefore come to us for scrutiny. We have over recent years referred more of these documents for debate in European Committee, or drawn them to the attention of the relevant Departmental Select Committee—something which our predecessor Committee saw as a priority back in 2002.⁷⁷ Analysing them is sometimes a challenge as the terms in which they are written can be general and broad, but we are referring them more often because they represent an important stage of the policy process.

Non-papers

68. Non-papers are discussion documents drafted by an EU institution or a Member State and are often used as a negotiating tool. The Minister for Europe told us that such papers are “just a way of floating ideas on a non-attributable basis. I suppose it is the nearest thing to applying off-the-record or Chatham House rules”,⁷⁸ adding:

It is a way of starting a discussion and putting forward policy ideas without suggesting that you are completely bound to those but signalling that you are open-

72 Q 118

73 Q 414. For an explanation of trilogue, see paras 72–78.

74 Q 122

75 Q 2

76 Qq 281 and 288

77 Thirtieth Report of Session 2001-02, *European Scrutiny in the Commons*, HC 152-xxx, para 86

78 Q 495

minded to constructive criticism and contrary ideas. It is starting a debate; in Westminster terms it is a pre-Green Paper stage ... As to non-papers, precisely because they are informal, they are not depositable and caught by the scrutiny resolution. While we would not refer to a non-paper in a letter to the Committee, we might make reference to ideas that might be included in it, but I think an oral briefing would be the best way forward.⁷⁹

69. Professor Simon Hix of the LSE told us that in his view non-papers were:

the equivalent of something going on in a Senate Committee in the US, where Senators on the Committee would be drafting their own opinions independently on a piece of legislation that is going through the House. I think of a non-paper as a statement of the position of the British Government in the middle of a legislative process, of the following type, and I have read some of these things: 'These are the key issues we care about in this document. These are the things we would reasonably consider are possibilities within this area or within that area.' I can understand why they would not want us to see it, because some of these things are highly sensitive, but being highly sensitive is not a good enough reason.⁸⁰

70. We note the Minister's comments about non-papers and the offer of oral briefings. The number of documents on which we report (often more than twenty a week) means that oral briefings on individual items are rarely feasible. We therefore ask the Government to give us an undertaking that it will use Ministerial correspondence as a way of keeping us informed of the gist of non-papers. We also ask that whenever a non-paper is produced on a document which we have under scrutiny, that there be a presumption that the Government will at the very least provide a summary of its contents in the form of a letter. This could either be in a form which is publishable or made available to us on a confidential basis. We will keep the provision of such information, and the use which we can make of it, under review.

Scrutiny and legislative development

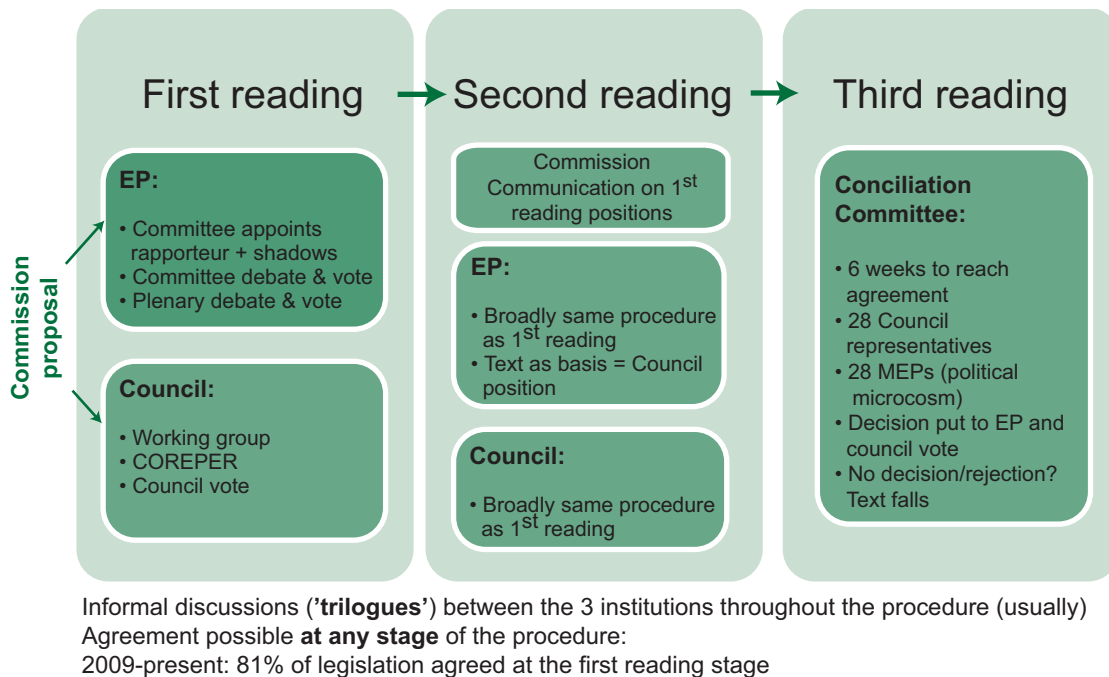
71. The codecision procedure was introduced by the Maastricht Treaty in 1993, and the scope of its application was extended by both the Amsterdam Treaty in 1999 and the Nice Treaty in 2003. The Amsterdam Treaty also formalised the ability of the institutions to conclude the procedure at any reading stage, a process which has come to be known as 'fast track' legislation or a 'first reading deal'. With the Lisbon Treaty which entered into force on 1 December 2009, the renamed ordinary legislative procedure became the main decision-making procedure of the EU, with an expansion of its scope to almost all areas of legislation with only a few limited, albeit important, exceptions. Overall, these Treaties have greatly increased the scope of the functions and competences of the EU, as well as the areas in which the ordinary legislative procedure applies. A flowchart showing the formal stages of the process is shown on the next page.⁸¹

79 Q 496

80 Q 445

81 Source: National Parliament Office

The ordinary legislative procedure



72. We think considerable emphasis should be placed on the statistic above that from 2009 to the present 81% of legislation was agreed at the first reading stage. For comparison, the first reading figure for 1999–2004 was just 33%, rising to 72% for 2004–09. Professor Damian Chalmers of the LSE gave the current figure as 79.5%.⁸²

73. The establishment of the ordinary legislative procedure as the norm of EU decision-making presents serious challenges for all national scrutiny systems, given that the vast majority of legislation is agreed to at the first reading stage. The unpredictable nature of first reading deals and trilogue negotiations can render scrutiny at national level difficult, if not impossible.

74. Concerns have been expressed about the impact of these closed negotiations from all sides: Sir Jon Cunliffe observed that “the [European] Parliament at President level has tried to constrain the first reading process ... there is a feeling that the Parliament as a whole is unaware of what is happening.”⁸³ The Parliament recently amended its Rules of Procedure to provide for the plenary to approve negotiating mandates prior to trilogues taking place, and also set out how the trilogue process should be conducted from the European Parliament side.⁸⁴ From the perspective of the Council, the Minister for Europe observed that:

82 Q 581

83 Q 403

84 Rule 70 can be found here: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20130701+RULE-070+DOC+XML+V0//EN&language=EN&navigationBar=YES>

Where we have noticed a change, even in the three and a bit years I have been doing this job, is that the Commission has become ever more willing to lean towards the Parliament and adjust its own proposals and approach to negotiations to try to make sure it gets the agreement of the Parliament. In my view, that has been done at the expense of the views of national governments represented in the Council. There has been an institutional shift.⁸⁵

75. Proposals may change significantly as a result of compromise agreements negotiated with the European Parliament after the relevant EP Committee has scrutinised the Council's 'common position' or 'general approach'⁸⁶ and significant new provisions may emerge at a late stage during trilogue negotiations which have never been subject to scrutiny, for example the European Parliament amendments on bankers' bonuses which arose as part of the EU CRD IV negotiations.⁸⁷ Sir Jon Cunliffe told us that towards the end of a Council Presidency the legislative timetable tended to get "squeezed",⁸⁸ adding that the UK could influence the speed of trilogue negotiations, but—at the end of the day—no Member State could determine the timetable.⁸⁹

76. The memorandum from Dr Ariella Huff and Dr Julie Smith stated that "parliamentary scrutiny in the UK (as in many other Member States) has not kept up with these changes."⁹⁰ We have been aware of this problem for a number of years, and have taken steps to resolve it. In our Report on the 2008–09 Session, published in January 2010, we commented that we were:

particularly concerned about the use of 'informal trilogues', a forum for confidential and binding negotiations, as part of the first reading agreement process. Informal trilogues consist of a representative of the relevant European Parliament committee (usually the rapporteur), the Commission, and the Presidency. No other Member State is present, so it is difficult for governments to follow the course of trilogue negotiations and to feed in their views, but it is well nigh impossible for national parliaments to do so at any appropriate point. Once a compromise text has been agreed in an informal trilogue, the chair of COREPER writes to the chair of the European Parliament committee informing them of the agreed compromise. Neither the Council nor the European Parliament may change a text agreed in an informal trilogue. In practice, we ourselves are not told of trilogue changes until too late - once the negotiation is concluded.⁹¹

77. The current Cabinet Office scrutiny guidance for Government Departments states, with regard to trilogue, that:

85 Q 483

86 A general approach is an informal preliminary position whereas a common position is the Council's formal negotiating stance.

87 See letter from the then Minister to the Committee, 15 April 2013, available in the 'Ministerial correspondence' section of the Committee website.

88 Q 394

89 Q 411

90 Ev w10, para 2 [Dr Ariella Huff; Dr Julie Smith]

91 Sixth Report of Session 2009–10, *The Work of the Committee in 2008–09*, HC 267, para 21

If there is a prospect of a First Reading deal, Departments must make this clear in the original EM, or if this becomes clear as negotiations develop, including in informal trilogue negotiations, as soon as this becomes a clear possibility. The committees should be informed by way of a Ministerial letter which should provide the Committees with a copy of the trilogue text under the arrangements for handling *limité* documents set out in section 2. The same principles apply to Second reading deals.⁹²

78. Since we identified this problem in 2010 there have been good examples of Government Departments keeping us updated throughout the course of negotiations, including the provision of *limité* texts, and summaries which can be placed in the public domain. We have been highly critical of Departments when this has not happened. The fundamental problems remain and this challenge, faced by scrutiny committees across the EU, was one of the reasons we launched our inquiry in 2012. We make further suggestions as to how to improve scrutiny of this process later in this Chapter.

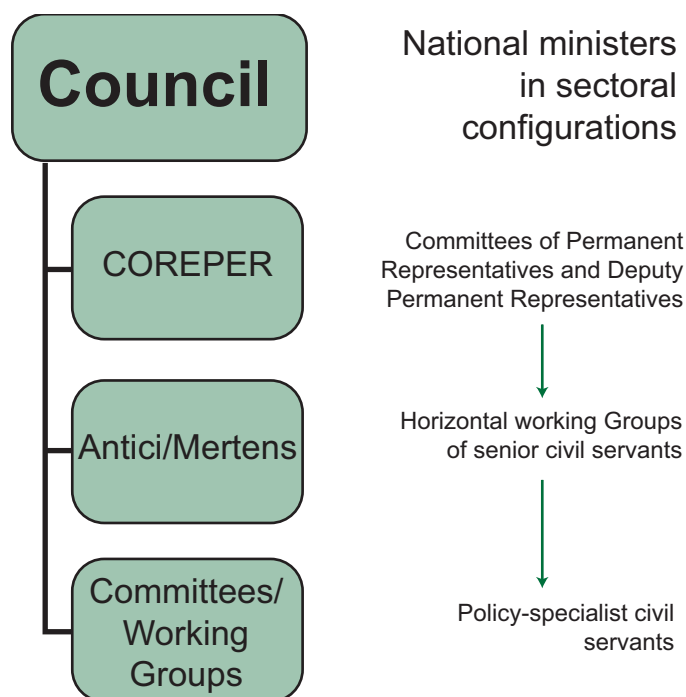
UKRep, Coreper and decision-making in the Council

79. We refer in the previous section to the forming of a common position or general approach in the Council. The decision-making process within the Council operates at a series of levels and closely involves—for the UK—the UK Permanent Representation to the EU (known as UKRep). Immediately below the Council meetings of Ministers sits the Committee of Permanent Representatives (known as Coreper), which is established by Article 16(7) of the Treaty on European Union. Article 240 of the Treaty on the Functioning of the European Union lays out its main tasks and responsibilities, stating that Coreper is “responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the latter.”

80. Coreper consists of ambassadorial-level representatives from the Member State governments and is chaired by the Member State which holds the Council Presidency. Coreper works in two configurations: Coreper I, consisting of the Deputy Permanent Representatives, which deals largely with social, environmental and internal market matters; and Coreper II, consisting of the Permanent Representatives, which deals with external relations, economic and financial matters, and justice and home affairs. The UK Permanent Representative to the EU, Ivan Rogers, sits on Coreper II. The Deputy Permanent Representative, currently Shan Morgan, sits on Coreper I. Further groups of senior civil servants from Member State governments plan the business of Coreper I and Coreper II: the Mertens Group (for Coreper I) and the Antici Group (for Coreper II). In addition, detailed, often line-by-line consideration of each legislative file takes place at working group level. Council working groups usually consist of specialist national civil servants who deal largely with the technical points of a dossier and identify the more contentious issues to be decided upon at a higher level. The layers of the decision-making process are set out in the chart overleaf:⁹³

92 *Parliamentary Scrutiny of European Union Documents: guidance for Departments*, Cabinet Office, para 3.5.3, available at <http://europeanmemoranda.cabinetoffice.gov.uk/>

93 Source: National Parliament Office



81. Coreper is described by the EU's official website as occupying "a pivotal position in the Community decision-making system, in which it is both a forum for dialogue (among the Permanent Representatives and between them and their respective national capitals) and a means of political control (guidance and supervision of the work of the expert groups)."⁹⁴ The influence and power which it exercises on legislation is demonstrated by the fact that the agendas for Council meetings reflect the progress made in Coreper, consisting of A items, which are normally approved without discussion following agreement within Coreper, and B items, for discussion, which is of significance given that the scrutiny reserve resolution only currently applies to "Ministers" (and therefore not to Coreper).⁹⁵ Sir Jon Cunliffe, at the time head of UKRep, explained:

If something looks as if it has agreement in a working group ... they can take a vote in the Committee and decide there is a qualified majority. ... That will then be proposed on the Coreper agenda as an I point—it is our version of an A point—which says, 'This proposal has been agreed and can go forward.' If it goes through Coreper as an I point, it will then go to a Council as an A point. It can go to any Council. The Council is indivisible, so an economic issue—the budget—can go to the Health Council or Education Council, etc., and Ministers there will not discuss it; it will just go through.⁹⁶

82. It is clear, therefore, that much of the decision-making takes place before Council meetings and below Council level, which is why the post of UK Permanent Representative

94 www.europa.eu, Glossary

95 See Chapter 4

96 Q 388

to the EU is so important and why we argued in letters to the Prime Minister and the Foreign Secretary in August and October 2013 that it should be subject to a pre-appointment hearing.⁹⁷ **We call on the Government to publish details of the day-to-day working arrangements of UKRep and Coreper, the precise way in which, and when, UKRep is given Ministerial instructions on specific matters, and an assessment (with examples) of the discretion given to UKRep officials to come to agreements relating to particular proposals.**

Limité documents

83. *Limité* is a description given to certain documents by the EU institutions. Significantly, new versions of proposals as they proceed through trilogue negotiations often have this marking. Guidance available on the Council's website describes *limité* documents as those "whose distribution is internal to the Council, its members, the Commission [and] certain EU institutions." It "is a distribution marking, and not a classification level."⁹⁸

84. The Council guidance on the handling of such documents states that:

Documents marked 'LIMITE' are deemed covered by the obligation of professional secrecy in accordance with Article 339 of the Treaty on the Functioning of the European Union (TFEU) and Article 6(1) of the Council's rules of procedure.⁹⁹

85. According to this guidance, which dates from June 2011, such papers may be distributed to:

any official of a national administration of a Member State, the European Council, the Council, the European Commission and the EEAS. 'LIMITE' documents may also be distributed to nationals of a Member State who are duly authorised to access such documents by virtue of their functions. Certain 'LIMITE' documents may be released to acceding States and to other EU institutions and bodies depending on the "subject code" on the front page of the document. Private contractors may be granted privileged access to 'LIMITE' documents in accordance with the relevant contractual obligations.¹⁰⁰

86. However, "LIMITE' documents may not be distributed to any other entity or person, the media or the general public without prior authorisation (preferably written) by a relevant official."¹⁰¹ Interestingly there is a special provision relating to the European Parliament, as follows:

Exceptionally, hard copies of 'LIMITE' documents may be made available to the chairpersons of relevant European Parliament committees, upon written request to the General Secretariat of the Council (GSC) and following agreement by duly authorised Council officials, on the understanding that the European Parliament will

97 See paras 271-277

98 Council of the European Union, 11336/11, *Handling of documents internal to the Council*

99 As above, para 5

100 As above, paras 14-16

101 As above, para 17

handle them in a manner that is consistent with this policy and will not make such documents or parts of them public without prior authorisation.¹⁰²

87. We have already noted that some other EU affairs committees receive *limité* documents as a matter of course. Following an exchange of letters between the Scrutiny Committees of both Houses and the Government in 2010, the Government agreed to share *limité* documents with us on our request, or on its initiative.¹⁰³ Given their claimed status it is said that they cannot be deposited as this would make them public. We therefore cannot report on them unless the Government provides, as it can, an EM or Ministerial letter containing an “unclassified” summary or until after the event. Another option is for the document to be “declassified” by the Council secretariat, but there have been unnecessary delays in doing this, for example relating to the European Defence Agency Annual Report.¹⁰⁴

88. While we can currently ask to see *limité* documents, receive others on the initiative of the Government, and potentially have informal access to such papers, one problem we encounter is that we do not know what to ask for—we do not formally receive, as a Committee, a list of *limité* documents from which to choose; as the Minister for Europe noted “we are getting almost into Rumsfeld territory of unknown unknowns”.¹⁰⁵

89. We note that *limité* is a distribution marking, *not* a security classification. We will seek to respect the confidentiality which it implies, while also respecting our obligations to Parliament, as was seen when an Urgent Question was granted to the Committee Chairman in October 2010 relating to a document setting out the conclusions of the task force on strengthening economic governance.¹⁰⁶

90. We explored *limité* status with the Minister, who set out in a later letter to us that in his view there are “good security reasons” for the classification.¹⁰⁷ He stated:

It is for the Committee to decide what to recommend to the House, but the Committee could propose amendments to the Standing Order to enable the scrutiny of certain documents to happen without the content being made public. The Committee could consider making reports on documents without making public administrative *limité* content that the Government had shared with the Committee to help it come to a more informed opinion on a particular negotiation. In effect, a sanitised report would be going into the public domain. Those would be ways of addressing this. It is for the Committee to decide whether that goes too far away from the principle of transparency, to which you rightly accord importance.¹⁰⁸

102 As before, para 18

103 *Parliamentary Scrutiny of European Union Documents: guidance for Departments*, Cabinet Office, para 2.3.1, available at <http://europeanmemoranda.cabinetoffice.gov.uk/>

104 First Report of Session 2013–14, HC 83-i, Chapter 17

105 Q 505

106 *HC Deb*, 27 October 2010, col 318

107 Ev w40

108 Q 498. The quotation reference in the following paragraph is to Q 129.

91. We were told that the UK Parliament is “among a few” national parliaments that do not have regular access to *limité* documents. We can ask to see such documents, and are supplied with them on an *ad hoc* basis, but we cannot ask to see documents if we do not know they exist. The current situation therefore leaves control of Parliament’s access to these important legislative papers firmly in the grip of the Government. In our view this is wrong. *We therefore recommend that the Government sends both Houses a weekly list of the limité documents which have been issued. We also recommend that the Government alerts the Committees whenever a limité document is produced on a document which is still under scrutiny, including a short summary of the limité text. Deposit is — and in our view should remain — a process which is inextricably linked with publication. It is now time to formalise separate mechanisms by which limité documents can be supplied to Parliament, which will assist our scrutiny of deposited documents. We will review how these mechanisms work once introduced, and in particular whether it should be possible in some way to hold limité documents under scrutiny. This links to arguments about the existence of this classification, which we cover below.*

The future of limité status

92. A recent judgment of the Court of Justice undermines the purported unassailability of the *limité* classification. Often, as in the case before the Court, the classification (and redaction) is used to mask the identity of Member States so as to avoid disclosure of their negotiating position. The case of *Council of the European Union v Access Info Europe*¹⁰⁹ concerned a request for the disclosure of a note prepared for a Council working group by the secretariat which outlined suggested changes to a legislative proposal to be discussed within that group. The note was disclosed but only with the redaction of the identities of the Member States who had tabled the changes.

93. The Court of Justice upheld, on appeal, the decision of the EU General Court that the note should have been provided without that redaction, so affirming the reasoning advanced by the General Court. This extended to the need to ensure “the widest possible right of access” to documents of the institutions “connected with the democratic nature of those institutions” and that therefore “exceptions to disclosure must be interpreted and applied strictly”. This is particularly so “where the Council is acting in its legislative capacity”.

94. We note that this corresponds with the view of Professor Simon Hix for more transparency and disclosure in relation to non-papers where connected to the Council’s legislative function.¹¹⁰ It also corresponds with the view of Professor Chalmers, also of the LSE, who attached considerable importance to this case and its consequences on national parliamentary scrutiny of first reading deals:

The biggest challenge I would say with the trilogue, which the Court of Justice might rectify any day of course, is that my understanding is that, because these are documents *limité*, this chamber does not have a right to them. They are treated at the moment as not being subject to access or freedom of information laws. It certainly

¹⁰⁹ Case C-280/11P

¹¹⁰ See para 69

cannot publish or see explanatory memoranda on them. This is a challenge, because the Commission proposal may be a little bit away from the trilogue draft, or the position that everyone knows is going to be staked out in the meetings.

In the access info case, the General Court in 2011 said this was completely illegal. It said, in principle, the positions of all the member states in negotiations had to be disclosed. There was this idea that you could hold those. The Council appealed. The Advocate General in May upheld the position of the General Court, and we will see what the Court of Justice says any day. If it follows the Advocate General and the General Court, you will be able to have an unfettered right, as I understand it, to what takes place in the trilogue and will be able to publish it for citizens to see, which I think would be a marvellous thing.¹¹¹

95. We note that the UK Government intervened in the General Court proceedings to support the request for unredacted disclosure, and we urge the Government to press the EU institutions to cease using the *limité* classification, particularly to protect Member States' negotiating stances. We also ask the Government for its opinion on the implications of this case for the *limité* classification.

Council meetings

96. At the final decision-making stages the Danish and Finnish models involve the relevant Committee giving the Minister some form of mandate immediately before a Council meeting. Our predecessor Committee's Report in 2002 noted that while useful changes were made in 1998 in the provision of written material "systematic pre- and post-Council scrutiny has remained an aspiration".¹¹² Since 2005 the ESC's system of Council scrutiny has developed but remains essentially a paper exercise. The current practice is for Government Departments to lay a written Ministerial statement in both Houses shortly before each Council meeting "setting out why the items are on the agenda and the Government's general position on the items" and another written statement afterwards with a "detailed" post-Council Report "setting out what happened at the meeting and what role the UK played."¹¹³ These agendas and statements are circulated to the Committee which considers them each week as a separate agenda item. During recesses, Ministerial letters to the Chairs of the Commons and Lords Committees take the place of written Ministerial statements.

97. Scrutiny of Council meetings, and consideration of the UK Government's approach, is critically important. Information about the positions which national governments have adopted in Council is publicly available both through the information provided to Parliament and also through the VoteWatch website.¹¹⁴ However, this is still a particularly opaque decision-making process; Simon Hix, LSE Professor and Director of VoteWatch

¹¹¹ Q 582

¹¹² European Scrutiny Committee, Thirtieth Report of Session 2001–02, *European Scrutiny in the Commons*, HC 152-xxx, para 61

¹¹³ *Parliamentary Scrutiny of European Union Documents: guidance for Departments*, Cabinet Office, Annex N, available at <http://europeanmemoranda.cabinetoffice.gov.uk/>

¹¹⁴ www.votewatch.eu

told us “overwhelmingly decisions are still made by consensus in the shadow of QMV.”¹¹⁵ Research conducted by VoteWatch concluded that “actual contest through formal voting only constitutes the tip of the iceberg: on average, governments voice concerns about a policy proposal 1.2 times per legislative act adopted by the Council [...] In reality policy proposals may therefore be more contested than would appear, despite being reported as ‘unanimously agreed’”.¹¹⁶

98. Gisela Stuart MP described the process as follows:

The way it essentially works is that you sit there as a Minister, an issue comes up, you talk to UKREP, and they do the headcount. This is why I am saying mandating Ministers is a bad idea. They add up the votes, and if it looks as if we will not win the vote, we do not force a vote. The voting system in Brussels tends to be more an exercise in affirmation, rather than an exercise in testing the strength. This is why, whenever I hear arguments by some of our former Commissioners when they say, ‘Of course we always get our way. Look, we have never lost a vote.’ I say, ‘That is because we have some really good diplomats, who never allow us to be seen to be losing a vote. We usually cave in before it comes to a vote.’¹¹⁷

99. **We conclude that the current process of Council decision-making and the role of Coreper and UKRep greatly obscures the position of individual Member States, and it is clear that Governments fall back on consensus if they know they are likely to be outvoted. This raises serious questions, given that some of the issues being decided would be the subject of an Act of Parliament if taken through domestic legislation.**

100. **Turning to consideration of Council meetings in Committee, we see this as a final check as our scrutiny of proposals will have already been completed in the vast majority of cases (the CFSP being a particular exception). We therefore conclude that our current approach is appropriate. However, we believe that there is scope in some cases for Departmental Select Committees to become more involved at this point if there are matters of detailed policy remaining to be negotiated (including possibly holding a pre-Council hearing), and will work with the Liaison Committee to develop suitable mechanisms and guidance to improve practice in this area. Scrutiny of European Council meetings is dealt with later in the Report in the section on the floor of the House.**

Transposition

101. A substantial amount of EU law is in the form of Directives which set out rules and objectives for Member States to apply at a national level. This process is known as transposition, and in the UK it is usually carried out by making statutory instruments under powers granted in the European Communities Act 1972. The European Scrutiny Committee does not examine the implementation of EU law, and some expressed concerns

115 Q 431

116 *Agreeing to disagree: the voting records of EU Member States in the Council since 2009*, VoteWatch Europe Annual Report, July 2012, p 10

117 Q 266

that this was not systematically examined elsewhere in the House.¹¹⁸ However, in our view it is at the time when an EU instrument is being negotiated that Parliamentary committees have the greatest scope to influence the outcome, for at that stage policy choices are open even if the UK may come to find itself outvoted.

102. The Environment, Food and Rural Affairs Committee's submission suggested that "there would be merit in introducing amendable motions, akin to those in European committees, in delegated legislation committees. Members would thereby have an opportunity to express a view on the desirability of the instrument, or highlight concerns about gold plating, without being fatal to the Government's legislation progressing through the House."¹¹⁹ We recommend a variation of this suggestion in our section on European Committees, which comes later in this Report. We leave the wider issue of transposition to the Procedure Committee and also to Departmental Select Committees, which we note have as one of their new core tasks "to assist the House in its consideration of bills and statutory instruments".¹²⁰

103. We also note the significant contribution of our colleagues on the Joint Committee on Statutory Instruments (JCSI) in highlighting transposition issues on individual implementing SIs.

104. Recent Government guidance on transposition sets out the following Guiding Principles for Departments:

The Principles state that, when transposing EU law, the Government will:

- a) ensure that (save in exceptional circumstances) the UK does not go beyond the minimum requirements of the measure which is being transposed;
- b) wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation;
- c) endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts;
- d) always use copy-out for transposition where it is available, except where doing so would adversely affect UK interests e.g. by putting UK businesses at a competitive disadvantage compared with their European counterparts or going beyond the minimum requirements of the measure that is being transposed. If departments do not use copy-out, they will need to explain to the Reducing Regulation Committee (RRC) the reasons for their choice;
- e) ensure the necessary implementing measures come into force on (rather than before) the transposition deadline specified in a Directive, unless there are compelling reasons for earlier implementation; and

118 See Ev w3, para 10 [European Conservatives and Reformists Group, European Parliament]; Ev w4, para 5 [City Remembrancer of the City of London Corporation].

119 Ev w27, para 12 [Environment, Food and Rural Affairs Committee]

120 Liaison Committee, Second Report of Session 2012–13, *Select committee effectiveness, resources and powers*, HC 697, Table 2

f) include a statutory duty for ministerial review every five years.¹²¹

105. Currently, SIs which involve transposition are laid with an annex to their explanatory memorandum which sets out the approach the Government has taken, including the compliance with these guidelines. The Minister for Europe observed that this was a complex area: “Sometimes they [government departments] might bring forward an SI that includes an element that is about implementing EU obligations but also an element that reflects something the Government want to do in any case.”¹²²

106. We asked the Minister whether there was scope to introduce some kind of clear indication of which SIs involved transposition (such as an ‘E’ as part of the document number). He replied that the “point about there having been previously some sort of flag in the process is an interesting one. I have no idea when or why that was discontinued.”¹²³ In a follow-up letter the Minister added that:

I agreed to look into flagging Statutory Instruments that ultimately have legal bases in the Treaties. The Joint Committee on Statutory Instruments (JCSI) has confirmed that whilst Members have always been informed when a Statutory Instrument stems from the European Communities Act 1972, this has never been made public in reports. The JCSI does therefore continue to flag Statutory Instruments that emanate from EU legislation to Members, but it is not published in the reports.¹²⁴

Conclusion

107. **We propose changes to Standing Order No. 143 at the end of this chapter, building on a set of proposed Standing Orders and a scrutiny reserve resolution originally published in 2010 by our predecessor Committee. Overall, we conclude that we should retain our sifting role as it currently stands.**

108. **We agree with the points made by our witnesses about the importance of seeking to influence the early gestative stages of the EU policy process, and note that this is a point at which the role of Departmental Select Committees can be highly significant. This is one of the reasons why we recommend enhanced scrutiny of the Commission Work Programme later in this Report, including the contemporaneous setting of priorities by Departmental Select Committees.**

109. **For our part, we will continue to scrutinise Commission Green and White Papers, recommending them for debate/Opinion as appropriate. We will aim to recommend documents for debate at an earlier stage of the legislative process, if possible before the Council adopts a common position or general approach. For this to work we will need as much notice as possible, which must be facilitated both by the UK Government and the Council. *We look to the latter in particular to fulfil the commitment made under Article 4 of Protocol (No. 1) to the EU Treaties, which states that an “eight-week period shall elapse between a draft legislative act being made available ... and the date on which***

121 *Transposition Guidance: how to implement European Directives effectively*, April 2013, para 1.3

122 Q 520

123 Q 521

124 Ev w40. The quotation references in para 110 are to Q 401 and Q 402.

it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure". We urge the Government to ensure that any information it receives about the timing of Council consideration is passed on to us as quickly as possible, and that debates on such documents take place in a timely fashion. We note that it may be necessary to act at speed, for example if we have reported on the Council's approach just before the trilogues begin. Our consideration of the contents of non-papers will inform this.

110. *In view of Sir Jon Cunliffe's statements that the Government "should aim to ensure that the Committee is updated on what we think will happen in the trilogue process" and "We will try to find ways to share information" we recommend that if there are substantive changes during trilogue negotiations the Government should provide Supplementary Explanatory Memoranda on documents which have cleared scrutiny (or deposit the new version of the document, with a new Explanatory Memorandum) automatically, rather than on request (thereby re-imposing the scrutiny reserve). The same should apply if there are material changes during negotiations within the Council, for example in the run up to a general approach or common position.*

111. *We recommend that all Statutory Instruments involving transposition of EU legislation should have a subsidiary "(E)" serial number (in a similar form to the existing subsidiary systems for commencement orders (C), the legal series relating to fees or procedures in Courts in England or Wales (L), or the Scottish, Northern Ireland and National Assembly for Wales series ((S), (NI) and (W) respectively)). They would therefore appear in the form S.I. 1998, No. 2357 (E. 12)).*

112. *We also recommend that all explanatory memoranda accompanying SIs contain a new section entitled Does this statutory instrument implement or supplement an EU obligation? Although it may be clear from the policy context whether an SI is implementing an EU obligation, we conclude that an unequivocal statement of this nature would be helpful for Members of Parliament and members of the public alike.*

113. *Under the European Communities Act, the Government is free to make statutory instruments implementing most EU legislation through the negative resolution procedure, which requires no debate on, or positive approval of, the instrument in Parliament. The negative resolution procedure provides the House with minimal scrutiny of the transposition of EU legislation. A possibility that could be considered further is to oblige certain statutory instruments implementing an EU obligation to be approved through the affirmative resolution procedure, which requires a debate and resolution of approval in both Houses. To be effective, this would require a change to the Standing Orders of the JCSI and an amendment of the European Communities Act to define which transposing legislation would require affirmative resolution.*

114. *As regards pre- and post-Council scrutiny, we comment below on the potential for pre-Council Committee hearings on CFSP; we reflect further on it in our section on the floor of the House.*

Non-legislative acts: challenges for document definition following the Treaty of Lisbon

115. As well as the challenges to scrutiny caused by the emergence of the ordinary legislative procedure as the default procedure for the enactment of EU law, further challenges have arisen as a consequence of the Treaty of Lisbon.

Legislative and non-legislative acts

116. The Treaty of Lisbon introduced the concept of draft legislative acts as defined in Article 289(3) TFEU, according to which “legal acts adopted by legislative procedure shall constitute legislative acts”. However, many binding EU acts are adopted by non-legislative procedure. Furthermore, where the legal base is silent on the legislative procedure to be used, the document is deemed non-legislative. Non-legislative acts include all CFSP Decisions (see the next section of this Report), Commission delegated and implementing legislation and Commission Communications, but also other legal acts. Our predecessor Committee noted this issue in its Report on the Work of the Committee in 2008–09, concluding:

EU activity will be divided into legislative acts, which are defined, and non-legislative acts, which are not. It is the second category which poses the problems for scrutiny. Many binding “Union acts”, issuing particularly from the Council or European Council will fall under the second category. It is for this reason that we have requested that the revised Standing Order refers to ‘non-legislative acts’ as well as ‘legislative acts’. Indeed, were it not to make this reference, we would be in a position where our scrutiny mandate under the Lisbon Treaty would be narrower than it is today.¹²⁵

117. The following are examples of non-legislative acts within the TFEU which should, for obvious reasons, be submitted for scrutiny:

- Article 74: Council to adopt measures to ensure administrative cooperation between Member States’ authorities under Title V (Freedom, Security and Justice).
- Article 78(3): Council taking provisional measures where one or more Member States are confronted with an emergency situation in the form of a sudden influx of third country nationals.
- Article 81(3)(2nd paragraph): Council Decision that aspects of family law with cross-border implications may be subject to the ordinary legislative procedure.
- Article 82(2)(d): Council Decision on “other” specific acts of criminal procedure to fall under competence of the EU.
- Article 95(3): Council provisions on non-discrimination in relation to transport charges and conditions for carriage of goods.

¹²⁵ Sixth Report of Session 2009–10, HC 267, para 15

- Article 103(1): Council Regulations and Directives in the field of competition policy.
- Article 109: Council Regulations in the field of state aid policy.
- Article 125(2): Council to define “overdraft facility/credit facility” with ECB or central banks of Member States and “privileged access” by EU institutions.
- Article 129(4): Council Decisions on operation of the ECB and ESCB.
- Article 148(2): Council guidelines on Member State employment policies.
- Article 150: Council to establish an Employment Committee to promote coordination of employment policies between Member States.
- Article 160: Council to establish a Social Protection Committee to promote coordination of social protection policies between Member States.
- Article 218: Council Decisions to sign or conclude international agreements
- Article 329: Council to authorise “enhanced cooperation” between Member States (where fewer than 28 arrange to cooperate).

118. In the absence of agreement with the Government to change our Standing Order as requested, we have relied on informal agreement with the Government about depositing non-legislative acts. This is not a satisfactory state of affairs, and so we propose amending Standing Order No. 143 to cover both legislative and non-legislative acts. Classes of non-legislative acts that are routine or trivial will be excluded from deposit by agreement with the Government.

Common Foreign and Security Policy and Common Defence and Security Policy proposals

119. Before the Lisbon Treaty, the Common Foreign and Security Policy (CFSP) was implemented by three types of measure: common strategies, joint actions and common positions, all of which were listed as depositable EU documents in Standing Order No. 143. Now the landscape has changed. The Decision is the only measure which can implement the CFSP: the European Council defines the general guidelines for the CFSP by adopting Decisions,¹²⁶ the Council implements it on the basis of these general guidelines by adopting further Decisions. Where Council Decisions are used for operational action, Member States are “committed” to them in the conduct of their activity.¹²⁷ Council Decisions must also be adopted for policies which “define the approach of the EU to a particular matter of a geographical or thematic nature”, in which case Member States “must ensure” that their national policies conform to the Decisions adopted by the Council.¹²⁸

¹²⁶ Article 26(1) TEU

¹²⁷ Article 28(1) and (2) TEU

¹²⁸ Article 28 TEU

120. These obligations are, however, politically binding rather than legally enforceable — as with the CFSP before the Lisbon Treaty, the Commission or other Member States cannot bring infringement proceedings against a Member State for non-implementation of a CFSP Decision, and the Court of Justice can only review them to the extent they infringe upon other areas of EU (rather than CFSP) external action. In addition, the TEU makes plain that legislative acts are excluded from the CFSP.¹²⁹

121. We conclude, for the reasons we have given, that Standing Order No. 143 needs to be amended to list European Council and Council Decisions under the CFSP as depositable documents.

122. However, despite the clear guidance to the contrary in the Treaty, the Government is a strong advocate of Council Conclusions, in place of Decisions, as a method of implementing the CFSP. This has clear implications for the scope of CFSP policies which are deposited for scrutiny. The Minister for Europe told us that “there is a clear Government policy that we do not deposit where it stems from Council Conclusions.”¹³⁰ He also drew the distinction between non-legislative decisions, “with a lower case ‘d’” and “formal Decisions, with a capital ‘D’”, by the Council, which are caught by the Scrutiny Reserve resolution,”¹³¹ stating that:

quite a lot of decisions, with a lower case ‘d’, by the EU about CFSP and CSDP are non-legislative, and they are embodied in working documents and action plans ... I acknowledge that this is a problem, and it is not one that is capable either of being answered by simply saying ‘Well, in that case, we need to make sure everything significant on CFSP and CSDP is authorised by a formal EU decision’, because decisions are supposed to be for something that has legislative impact.¹³²

123. He argued that further uncertainty arose from the fact that the “treaties do not define strategies and action plans. Those terms can be and are used both for the grand overviews and for quite routine working documents.”¹³³ Figures produced by the FCO show that between September 2012 and July 2013 the Government deposited 19 action plans and 15 strategies: it is not clear how many further plans/strategies were produced but not deposited.

124. European Neighbourhood Policy Action Plans are a case in point. Despite there being a clear legal base for them in Article 29 TEU (“[t]he Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature”), the Government asserts they should be adopted by Council Conclusions, with little support from other Member States it seems, because they are political commitments.¹³⁴

¹²⁹ Article 24(1) TEU, repeated in Article 31(1) TEU

¹³⁰ Q 27

¹³¹ Q 25

¹³² Q 25

¹³³ Q 26

¹³⁴ See, for example, our Reports on the Palestine, Morocco and Lebanon Action Plans: HC 83-vi (2013–14), chapter 12 (19 June 2013), HC 83-xiii (2013–14), chapter 13 (4 September 2013), and HC 83-xiii (2013–14), chapter 16 (4 September 2013) respectively.

125. The Government also continues to resist the Committee's position with respect to a new CFSP "instrument", namely "The Framework". The case in point is Burma. Subsequent to the recent major political changes, a 'comprehensive framework' was adopted at the 22 July 2013 Foreign Affairs Council via Council Conclusions. The Committee has argued that this should have been scrutinised beforehand. The Minister's response is that this is not depositable because it is not legislative; being but "an outline of EU policy towards Burma, debated among Member States". The Committee's view is the opposite: that it is precisely because this will determine everything else that follows, and has been "debated among Member States", that it should also be scrutinised beforehand by the House before adoption. As with Action Plans, Article 29 does not make any distinction: anything that "define[s] the approach of the Union to a particular matter of a geographical or thematic nature" shall be adopted by decision.

126. For comparison, the most recent provisions adopted by the German Bundestag state:

In the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy, the Federal Government shall provide comprehensive, continuous notification as early as possible. The notification shall, as a rule, be made in writing. It shall comprise the forwarding of a summary of the legislative acts that are due to be the subject of discussion, an appraisal of them and a prognosis of the future course of discussions. Section 4(4) shall apply, *mutatis mutandis*, to meetings of the European Council and the Council featuring decisions and conclusions in the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy.

(2) In addition, the Federal Government shall forward to the Bundestag, on request, documents of fundamental importance in accordance with the provisions of section 6(1) of this Act. Section 6(2) of this Act shall apply, *mutatis mutandis*.

(3) The Federal Government shall also provide continuous and early oral notification of all relevant developments in the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy.

(4) The Federal Government shall notify the competent committees of the Bundestag orally about the meetings of the Political and Security Committee.¹³⁵

127. Dr Ariella Huff pointed out that this was an area where a system based on documents encountered problems because those "documents come in a variety of guises, in many cases non-typical guises".¹³⁶ She also noted that "There is an ad hoc nature to this scrutiny that makes it very difficult to do because you are not looking at legislation".¹³⁷ Sir Jon Cunliffe stressed to us that in his view some of the administrative problems were "getting a little bit better", due in part to a "bedding down" of a new area of scrutiny.¹³⁸

¹³⁵ http://www.bundestag.de/htdocs_e/bundestag/europe/ipex/EUZBBG_Juli_2013_EN.pdf

¹³⁶ Ev w10, para 6 [Dr Ariella Huff], Q 137

¹³⁷ Q 137

¹³⁸ Q 409

128. We do not recognise the distinction the Minister makes between “decisions” and “Decisions”, and note the Minister appeared to be unaware that all CFSP Decisions are non-legislative. We take the view that action plans, strategies and frameworks form an important part of the CFSP process and should be depositable; we have accordingly added them to the new version of our Standing Order, which is set out at the end of this chapter, to cover situations where they are adopted by Council Conclusions.

129. We conclude that there is a real problem with current scrutiny of CFSP. First, there are a high number of ‘systemic’ overrides on measures relating to sanctions and asset-freezing which risk devaluing the scrutiny reserve. Second, the Standing Order is woefully out of date and in the absence of an agreed definition of ‘depositable document’ in this area we have had a series of ongoing disputes with the Government about particular categories of papers. It is important to address this because these are high profile and significant measures.

130. Dr Huff suggested that Ministers giving evidence to the ESC or other Committees before Council meetings was “absolutely critical in making sure that Parliament has its voice heard in these sorts of discussions”. *We recommend that not only should our Standing Orders be updated but also that we, the Foreign Affairs Committee and the Defence Committee should liaise to develop a more coherent system of CFSP and Common Security and Defence Policy (CSDP) scrutiny, including a pre-Foreign Affairs Council hearing, in order both to reduce unnecessary overrides and make the scrutiny process in this area more effective. In order to facilitate this we ask the Government to supply the three Committees with relevant limité draft Foreign Affairs Council Conclusions.*

Delegated and implementing acts

131. A further issue has arisen as a result of the increase in the volume and significance of EU delegated legislation following the Treaty of Lisbon. The FCO memorandum notes that the current arrangement is essentially subjective, as technically all such proposals are depositable, “but in practice most ... concern minor technical issues ... [therefore] they are only deposited if the content of the decision is considered sufficiently legally or politically important to need reporting. This decision is taken in consultation with the clerks of the Committees.”¹³⁹

132. The Minister for Europe told us that there are around 1,700 items of implementing and delegated legislation a year, and added that:

Some Departments have tried to pick out those implementing and delegated Acts that the Government believe are politically sensitive or important, and flag them up to the Committees. Sometimes the Government have deposited politically significant proposals. It is not done systematically.¹⁴⁰

133. *Given the sheer number of documents in this category it is clear that depositing all delegated and implementing acts would swamp the scrutiny system. The existing ad hoc*

¹³⁹ Ev w 8, para 29. The quotation reference in para 130 is to Q 137.

¹⁴⁰ Q 519

arrangements work reasonably well, but given the weaknesses identified by the Government we ask it to propose a coherent cross-Departmental approach for determining which implementing and delegated acts will be subject to deposit for the consideration of both this Committee and the European Union Committee in the House of Lords.

Proposed new definition of European document for Standing Order No. 143

The expression ‘European Union document’ in this order and in Standing Order No. 16 (Proceedings under an Act or on European Union documents), No. 89 (Procedure in general committees) and No. 119 (European Committees) includes—

- i. a document published by the Commission;**
- ii. a document, or a class of documents, published by any other European Union institution, body or office-holder that the European Scrutiny Committee requests to be deposited;**
- iii. a document submitted by an institution of the European Union to another Union institution;**
- iv. a draft legislative act or a draft non-legislative act, or a substantially revised version of such a draft;**
- v. Decisions relating to the Common Foreign and Security Policy and the Common Defence and Security Policy, and associated general guidelines, frameworks, action plans and strategies (if they are to be adopted by Council Conclusions);**
- vi. any other document relating to European Union matters deposited in the House by a Minister of the Crown.**

The Committee may waive the requirement to deposit an EU document, or classes of EU documents, by agreement with the Select Committee on the European Union of the House of Lords.

[The current definition, for comparison, is:

(i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

(ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

(iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

(iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

(v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

(vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.]

4 The importance of the scrutiny reserve

135. The main focus of the existing system is, and will continue to be, on the UK Government and individual Ministers. This has been established by Parliament in the form of the scrutiny reserve, which comes from separate resolutions of each House. As circumstances have changed, and the transfer of significant competences and functions has increased under successive Treaties, so the importance of the reserve has increased. However, as with the definition of depositable documents, the House of Commons version of the reserve is now out of date, having been agreed in November 1998.

136. The reserve resolution states that Ministers should not give agreement to a proposal until it has cleared scrutiny, either by an ESC decision or having been the subject of a resolution of the House following a debate either in European Committee or on the floor of the House. There are limited exemptions in the resolution, but Sir Jon Cunliffe told the Committee that “Overriding scrutiny is a big thing in the system. Ministers do not like doing it, if only because they have to appear before your Committee and explain why.”¹⁴¹

137. Dr Katrin Auel explained the advantages and disadvantages of the reserve, emphasising in particular that the Committee’s diligence in pursuing lapses was important, but putting it into context of its effect on decision-makers in Brussels. Interestingly, she referred in particular to Coreper, and the Mertens and the Antici Groups, the significance of which we noted earlier in this Report:

We need to distinguish between an impact on the negotiations and agreements at European level and an impact on the behaviour of the Government in the capital towards its Parliament [...] We have looked at other Member States that have similar scrutiny reserve systems that have often used the UK system as a blueprint, but we find that that is fairly ineffective because MPs do not follow up. I think that, at home, it is quite effective as it is a constant reminder of parliamentary responsibility for the scrutiny system and of the need to keep Parliament involved and to give Parliament time to scrutinise documents before agreeing to something in Brussels. That brings me to the second aspect. We have also conducted interviews with the General Secretariat and with people working for Coreper, for the Mertens and the Antici Group. Sadly, the truth is that the scrutiny reserve does not matter much. If the Government wants to agree to a measure at the European level, it will do so either by informally indicating that it will, and just waiting for the scrutiny reserve to be lifted, or by breaching the scrutiny reserve.¹⁴²

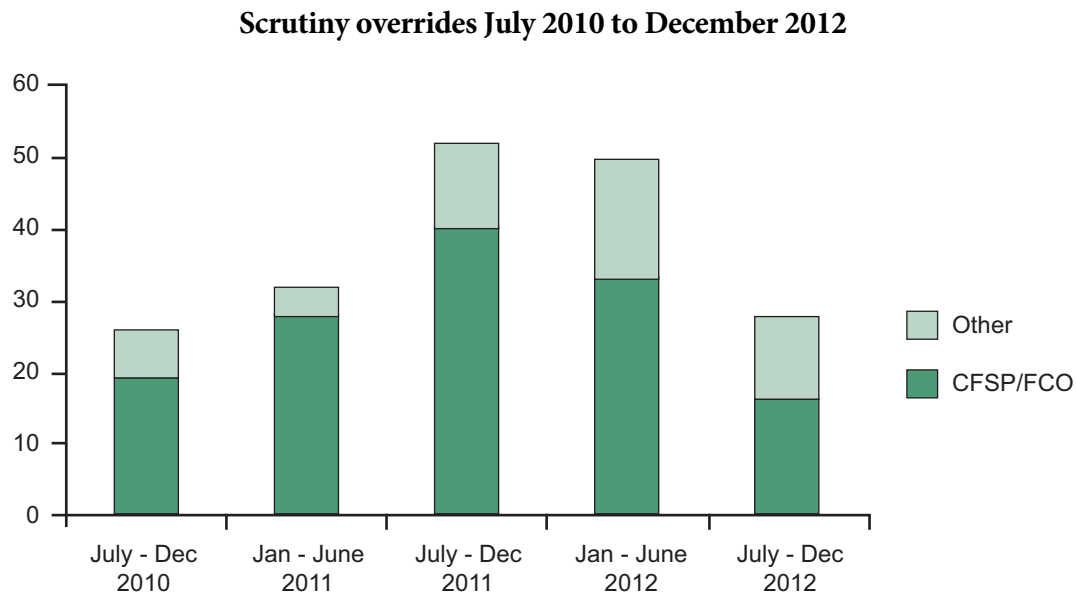
138. The “second aspect” of Dr Auel’s comments caused us deep concern. It is clear that the work of Coreper has profound impacts for democratic accountability, which is one of the reasons why we think that the Head of UKRep should be subject to a pre-appointment hearing.¹⁴³

141 Q 392

142 Q 120

143 See para 277

139. We continue to monitor closely the reserve as it affects individual documents, and general trends through the override statistics provided to us by the Cabinet Office. The total numbers of overrides since the 2010 General Election are shown in the chart below:



140. There has been a rise over time, with particularly high numbers of overrides in the second half of 2011 and the first half of 2012. Efforts have continued within Government to address this. Some of the issues associated with CFSP and CSDP were covered in the previous section of this Report.

141. We challenged the analysis of the statistics for the first half of 2012 provided by Ivan Rogers, then Head of European and Global Issues Secretariat at the Cabinet Office, which stated that “a number of [the FCO instruments] needed to be adopted at times where the committee was not sitting during the recess periods in the first half of the year. This was common also to a number of other overrides by other departments.”¹⁴⁴ Recesses were also cited as a factor in the FCO memorandum (which also linked overrides to the increasing number of EMs)¹⁴⁵ and by the Minister for Europe.¹⁴⁶

142. The response to our challenge on the January to June 2012 statistics from Mr Rogers, conceded that “I would agree that we should not overstate the impact that Parliament’s sitting patterns has on the scrutiny process, while recognising this will continue to be a factor on some occasions.” As well as fast-moving CFSP/CSDP proposals, he told us, other overrides during that period broadly fell into categories of: *limité* documents/late availability of texts; speed of decision making in Brussels; political decision to support negotiated texts; and administrative oversight.¹⁴⁷

¹⁴⁴ Letter to the Chairman of the Committee, 22 October 2012

¹⁴⁵ Ev w7, paras 16 and 17; Ev w9, para 34

¹⁴⁶ Q 24

¹⁴⁷ Letter to the Chairman of the Committee, 5 February 2013. The reference in para 144 to Baroness Ashton’s statement is to HL Deb, 9 June 2008, cols 373–377.

143. We conclude that the reserve must remain the centre of gravity of the House of Commons scrutiny system. *We therefore propose two major changes to reflect the reality of EU decision-making highlighted throughout this Report: first, that an override shall be regarded as having occurred when the Government abstains on a vote on a document held under scrutiny, not just when it votes in favour; and, second, that agreement or acquiescence by Government in reaching a consensus in Coreper on a document held under scrutiny, when the Government does not intend to object to the matter being raised as an A point in Council, should also trigger an override.*

144. The general scrutiny reserve resolution does not cover a Government decision that the UK will participate in an EU justice and home affairs measure, where the UK has discretion over its participation under the EU Treaties. Such discretion exists either under the Title V opt-in or Schengen opt-out arrangements. Under the EU Treaties, a UK decision to participate in such an EU law is irreversible, and by their nature these laws typically concern sensitive matters. When Baroness Ashton, for the previous Government, made a statement on 9 June 2008 on improving Parliamentary scrutiny of these opt-in decisions, she said that these Government undertakings on better scrutiny should be reflected in an amended or new scrutiny reserve resolution. We therefore propose at the end of this Chapter an opt-in scrutiny reserve resolution to cover decisions taken in Whitehall to opt into or out of Title V or Schengen measures.

145. *Since our exchange of letters with the Cabinet Office the information we have received on scrutiny overrides has improved and we look forward to continued engagement with the Government with the aim of eliminating unnecessary overrides. To this end we will continue to scrutinise the override statistics closely. As a further measure to increase transparency we will from now on be placing the correspondence on overrides on a special section of our website.*

146. *We will also continue to hold oral evidence sessions with Ministers in cases where there are serious breaches of the reserve (as took place in July 2013 with the then Minister for Public Health, Anna Soubry MP; in July 2012 with Crispin Blunt MP, then Parliamentary Under-Secretary at the Ministry of Justice; in February 2012 with Baroness Wilcox, then Parliamentary Under-Secretary at the Department for Business, Innovation and Skills; and in December 2011 with Chris Grayling MP, then Minister for Employment at the Department for Work and Pensions). For particularly serious breaches of the reserve, or repeated serious breaches, we will in future issue a Report censuring the Minister concerned, and if necessary recommend that this be debated on the floor of the House.*

147. The fact that the scrutiny reserve has lain unamended for so long is unfortunate and undermines its credibility. We propose a new version overleaf, based on the version which this Committee published in 2010.

Draft European scrutiny reserve resolution

That —

(1) Subject to paragraph (6) below, no Minister of the Crown should give agreement in the Council or in the European Council in relation to any document subject to the scrutiny of the European Scrutiny Committee in accordance with its Standing Order, while the document remains subject to scrutiny.

(2) A document remains subject to scrutiny if —

(a) it is awaiting consideration by the House (that is, it is a document which has been recommended by the European Scrutiny Committee for consideration pursuant to Standing Order No. 119 (European Committees) but in respect of which the House has not come to a Resolution); or

(b) in any case, the Committee has not indicated that it has completed its scrutiny.

(3) In this Resolution, agreement in relation to a document means agreement however described and whether or not a formal vote is taken, and includes in particular —

(a) political agreement;

(b) agreement to a general approach;

(c) agreement establishing the position of the Council at any stage in the legislative procedure; and

(d) agreement to Council and to European Council conclusions

(4) Agreement also includes agreement by an UKRep representative in Coreper when the Government does not intend to object to the matter being raised as an A point in Council.

[current version: In this Resolution, any reference to agreement to a proposal includes

(a) agreement to a programme, plan or recommendation for European Community legislation;

(b) political agreement;

(c) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 251 of the Treaty of Rome (co-decision), agreement to a common position, to an act in the form of a common position incorporating amendments proposed by the European Parliament and to a joint text; and

(d) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 252 of the Treaty of Rome (co-operation), agreement to a common position.]

(5) Abstention shall be treated as giving agreement.

(6) The Minister concerned may, however, give agreement in relation to a document which remains subject to scrutiny—

(a) if the European Scrutiny Committee has indicated that agreement need not be withheld pending completion of scrutiny; or

(b) if the Minister decides that exceptionally and for special reasons agreement should be given;

but they must explain their reasons in writing—

(i) in every such case, to the European Scrutiny Committee at the first opportunity after reaching their decision; and

(ii) in the case of a proposal awaiting consideration by the House, to the House at the first opportunity after reaching their decision.

[current version: The Minister concerned may, however, give agreement

(a) to a proposal which is still subject to scrutiny if he considers that it is confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed;

(b) to a proposal which is awaiting consideration by the House if the European Scrutiny Committee has indicated that agreement need not be withheld pending consideration.

(4) The Minister concerned may also give agreement to a proposal which is still subject to scrutiny or awaiting consideration by the House if he decides that for special reasons agreement should be given; but he should explain his reasons

(a) in every such case, to the European Scrutiny Committee at the first opportunity after reaching his decision; and

(b) in the case of a proposal awaiting consideration by the House, to the House at the first opportunity after giving agreement.

(5) In relation to any proposal which requires adoption by unanimity, abstention shall, for the purposes of paragraph (1), be treated as giving agreement.]

Draft Resolution on Title V opt-in and Schengen opt-out scrutiny

1) This Resolution applies in relation to a notification to the President of the Council of the European Union or to the Council and the Commission of the wish of the United Kingdom to take part in the adoption and application of a proposed measure or acceptance of an adopted measure following from a proposal or initiative presented to the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union; and in relation to a notification to the Council, pursuant to Article 5(2) of Protocol (No. 19) on Schengen, of the wish of the United Kingdom not to take part in a proposal or initiative building upon elements of the Schengen acquis in which the UK already participates.

2) No Minister of the Crown may authorise such notification until eight weeks have elapsed since the date on which the last language version of the proposal or initiative was published, nor if it is awaiting consideration by the House (that is, it is a document which has been recommended by the European Scrutiny Committee for consideration pursuant to Standing Order No. 119 (European Committees) but in respect of which the House has not come to a Resolution).

3) Where, after the adoption of a measure by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, a Minister of the Crown wishes to accept that measure, he shall inform the European Scrutiny Committee by letter. The Minister concerned may not authorise such notification to the Council and Commission until eight weeks have elapsed since the date on which the letter was sent to the Committee, nor if the measure is awaiting consideration by the House (that is, it is a document which has been recommended by the European Scrutiny Committee for consideration pursuant to Standing Order No. 119 (European Committees) but in respect of which the House has not come to a Resolution).

4) The Minister concerned may, however, authorise notification sooner than provided for in paragraphs (2) and (3) —

if the European Scrutiny Committee has indicated that notification need not be withheld pending completion of scrutiny; or

if the Minister considers that for special reasons notification should be given; but he must explain his reasons—

(i) in every such case, to the European Scrutiny Committee at the first opportunity after deciding to give notification; and

(ii) in the case of a proposal awaiting consideration by the House, to the House at the first opportunity after authorising notification.

5 European Union business on the floor of the House

148. Given the crucial nature of the primacy question and the impact of EU legislation on the electorate through the European Communities Act 1972, the floor of the House is where key EU business should be debated, thereby creating the opportunity for the widest cross-section of Members to take part. It is also, as Peter Knowles, Director of BBC Parliament, commented “the way in which most people will have encountered the work of this Committee.”¹⁴⁸ We note that several debates on documents we have recommended for the Chamber this year have been over-subscribed, and short speech limits imposed.¹⁴⁹

149. Dr Auel observed that the UK had been “ranked quite low” compared to the French Assemblée Nationale and the German Bundestag in terms of time spent in plenary,¹⁵⁰ and many of the Members who responded to our survey (44%), and stakeholders (80%), thought that more time should be taken on European Union business on the floor. Others, for example Martin Horwood MP, took a different view, telling us:

I would not support giving this Committee more time on the Floor of the House; it gets quite a lot already. In a sense, the whole point is to try to get it away from these generalist committees and into more specialist and policy-informed hands.¹⁵¹

150. Over recent years the number of debates on the floor of the House on European documents has increased, although a significant proportion of that increase has arisen from new procedures and practices such as Reasoned Opinions and opt-in debates. For example, in the 2012–13 Session four of the ten debates on the floor were on Reasoned Opinion or opt-in motions, and in the long 2010–12 Session the proportion was greater: eight out of 19.

Debates on EU Documents on the floor of the House

151. The ESC does not currently have the power to refer documents directly for debate on the floor of the House. When we believe a document warrants a floor debate, we have to wait for the Government to arrange it. Formally, the document stands referred to a European Committee (debates in these Committees are covered in a later Chapter of this Report).

152. There is an understanding that the Government will make time available for a floor debate if we so recommend. However, there have been problems with long delays and recently we have had something of a war of attrition with HM Treasury in particular, which at one point had a series of floor debates outstanding. One particular debate on the

148 Q 200

149 See for example the debate on CAP reform on 18 June 2013 (*HC Deb*, col 774 [5 minute limit]) and the debate on a Reasoned Opinion relating to the gender balance on corporate boards on 7 January 2013 (*HC Deb*, col 70 [5 minute limit]).

150 Q 116

151 Q 289

Commission's *Blueprint for a deep and genuine EMU* and the President of the European Council's report *Towards a Genuine Economic and Monetary Union*, which we made clear raised significant issues concerning the primacy of the UK Parliament, took five months to schedule and only took place on the floor of the House following direct representations by the Committee to the Prime Minister. Even then, it was combined with a significant debate on the unrelated subject of the Financial Transaction Tax.

153. We note in this context the Minister for Europe's view that:

As to formal debates on scrutiny, I have consistently taken the view that they need to be done as early as possible. The dilemma that business managers always face is that there are a limited number of parliamentary hours in the week, and there is a lot of competition for time, particularly on the floor of the House. I have always taken the view that, in principle, the sooner the better.¹⁵²

154. We welcome the Minister's view that debates should take place "as early as possible". While we acknowledge the role of business managers, it is clear that Ministers in all Departments have responsibility for and are accountable for the timing of debates on their documents and for making decisions on whether to accept our recommendation that particular documents should be debated on the floor of the House.

155. Several witnesses said that we should have the power to refer documents directly for floor debate, as was the situation until the early 1990s. Those in favour of such a 'right to refer' included the Fresh Start Project¹⁵³ and Chris Heaton-Harris MP and Robert Broadhurst.¹⁵⁴ The Minister for Europe, however, rejected the idea, commenting:

I think a question arises: if the Committee has the right to insist on a floor debate, then whose time does it take? While I have not put this to colleagues in Government, I am pretty confident that the collective response would be that for this or any Committee there cannot be the untrammelled right to simply take Government time for a debate on the floor of the House.¹⁵⁵

156. In our view this statement is wrong. It must be remembered that many of the documents we refer for debate are legislative proposals which will have direct effect on the citizens of the United Kingdom, and would—if enacted through domestic legislation—be the subject of an Act of Parliament. Time spent on such debates cannot be equated with, for example, backbench business, or with the recommendations of a Departmental Select Committee report, however important these two types of business undoubtedly are.

Conclusion

157. We have reflected carefully on consideration of European Union business in the Chamber, as it is the most high-profile aspect of the House's scrutiny process. We

152 Q 517

153 Ev w1, para 1(i)

154 Ev w14, para 24 and Q 310

155 Q 16

therefore propose a set of recommendations in order to make time on the floor of the House better-used, and to make Ministers more accountable for their decisions.

158. *Firstly, there is a strong case for adopting some of the procedures used for opt-in debates—namely a prior commitment by the Government to arrange a floor debate for measures which attract particularly strong Parliamentary interest (without prejudice to any recommendations we may make) across all types of EU business. The measures likely to be subject to these commitments could be announced by way of a Statement following consultation with this Committee, and could tie into the more systematic consideration of the Commission Work Programme we propose later in this Report.*

159. *We propose that the Government should undertake to make time available in the House within four sitting weeks of a Committee recommendation for a floor debate (unless the Committee has for any reason waived this requirement or has recommended a more urgent timescale).*

160. *We further recommend that the format of House debates should follow that of a European Committee—the debate should begin with a short explanatory speech by the Chairman or a nominated member of the ESC, before the Minister first makes a statement and responds to questions, and then moves the motion; the total length of such a debate would be no more than two and a half hours.*

161. When we put this to the Minister he gave a positive though non-committal response:

I can see the case for doing that. It would mean more time being used than at present. I do not want to give a firm view this morning. It sounds to me like the sort of thing, if the Committee includes it in its report, I would look at with an open mind and take to colleagues and discuss with them.¹⁵⁶

162. *In the case of a Reasoned Opinion we note that the Procedure Committee recommended in 2011 (with particular reference to European Committees) that:*

It is evident that the present situation, in which a Minister must move a motion for a reasoned opinion whether or not the Government supports that motion, is confusing and misleading for Members and for the public. Since it is the European Scrutiny Committee which recommends that the House should consider a motion for a reasoned opinion, it would be logical for that motion to appear in the name of the Chair of the European Scrutiny Committee or in the name of another member of the Committee acting on its behalf. The difficulty at present is that Standing Order No. 119 refers, in paragraph 9, to a motion ‘of which a Minister shall have given notice’. We recommend that paragraph 9 of Standing Order No. 119 be amended by inserting, after ‘Minister’, ‘or, in the case of a motion for a reasoned opinion under Protocol (No. 2) to the Lisbon Treaty, a member of the European Scrutiny Committee’.

We fully agree with this recommendation, and take the view that it should apply, modified as necessary, to debates on Reasoned Opinions on the floor of the House.

163. *We also support the introduction of a procedure “for an appropriate number of MPs to table a motion challenging the [European Scrutiny] Committee’s decision [not to refer a document for debate] and force a vote on the floor of the House” originally made in a 2007 paper by the think-tank Politeia written by Theresa May MP. We note that the paper commented that “the procedure should be a last resort and be limited to serious issues that are in the national interest”. In our view the threshold for such a procedure should be reasonably high. Where such a motion is tabled, it should impose the scrutiny reserve on the relevant EU document until the House has come to a resolution on the matter.*

A national veto and disapplication of EU law

164. Finally, and linking back to the comments we made at the beginning of this Report about the ongoing debate on the role of national parliaments within the EU, we recommend that the option should be available for this Committee to recommend to the House a form of national veto on EU legislation in particular circumstances. We recall that the White Paper *The United Kingdom and the European Communities*, published in July 1971, (following which the House of Commons gave a Third Reading to the European Communities Bill, on division, by 301 votes to 284), stated:

The Community is no federation of provinces or countries. It constitutes a Community of great and established nations, each with its own personality and traditions. The practical working of the Community accordingly reflects the reality that sovereign Governments are represented round the table. On a question where a Government considers that vital national interests are involved, it is established that the decision should be unanimous.

...

All the countries concerned recognise that an attempt to impose a majority view in a case where one or more members considered their vital national interests to be at stake would imperil the very fabric of the Community.¹⁵⁷

165. Ministers of the UK Government have recently proposed the introduction of some form of collective ‘red card’ or ‘emergency brake’, for new legislation. The Minister for Europe explained that:

We thought it was right to bring forward the idea that we should go beyond the yellow card and propose an outright power of veto. If a given number of National Parliaments around the EU said that a certain Commission proposal should be blocked, the Commission simply would not be able to review it and decide to resubmit but would have to take it off the table. It is not something the British Government have yet formally adopted as a policy, but it is an idea we have put out that we think needs serious consideration.¹⁵⁸

¹⁵⁷ Home Office, *The United Kingdom and the European Communities*, Cm 4715, July 1971, paras 29 and 30; HC Deb 13 July 1972 vol 840 cols 1862-988

¹⁵⁸ Q 478

166. He made it clear to us that the Government had in mind that this card should not be playable unilaterally: “The Foreign Secretary, the Prime Minister and I have been proposing not that a power of veto should be accorded to a single national parliament but a development of the process that is in the Lisbon treaty ... we should give consideration to giving National Parliaments above a certain threshold an outright power to block a Commission initiative.”¹⁵⁹

167. In our view, such a development is no substitute for Parliamentary sovereignty. Once the principle of a form of veto has been conceded, it is logical to explore the many ways in which it could be deployed. With regard to EU legislation, the three important questions are: what should the threshold for such a veto be, what effect should it have if deployed (across the EU or just in the country or countries concerned) and should it apply to existing as well as new legislation?

168. We raised these questions with some of our witnesses, in particular Professor Damian Chalmers of the LSE, and author of a recent paper entitled *Democratic Self-Government in Europe — Domestic Solutions to the EU Legitimacy Crisis* that advocates a form of unilateral red card for national parliaments. He summarised his views as follows: Article 4(2) TEU, particularly the obligation it contains that the EU “shall respect the essential State functions” of its Member States, puts into doubt the principle of supremacy of EU law and the monopoly of the Court of Justice on its interpretation. Accordingly, Professor Chalmers stated, the primary purpose of EU law is to respect the democratic identity of its Member States. Consistent with this, the great majority of constitutional courts of the Member States consider that national constitutional provisions have primacy over EU law, demonstrated, for example, by the decisions of the constitutional courts of Germany, Poland and the Czech Republic.

169. In Professor Chalmers’ view, where a national electorate wishes its legislators to disapply a provision of EU law (for reasons not limited to subsidiarity) it should be entitled to do so. A procedure for consulting other national parliaments would then have to follow a national decision to disapply. His central thesis was that national parliaments, as the embodiment of the democratic identities of their Member States, should be given a more powerful say in what the EU legislates on.¹⁶⁰

170. We conclude that there should be a mechanism whereby the House of Commons can decide that a particular EU legislative proposal should not apply to the United Kingdom. The House’s view could only be expressed prior to the adoption of the measure at EU level: but if such a motion was passed the UK Government would be expected to express opposition to the proposal in the strongest possible terms, including voting against it.

171. We further conclude that parallel provision should be made to enable a decision of the House of Commons to disapply parts of the existing acquis. This, we acknowledge, would require an Act of Parliament to disapply the European Communities Act 1972 in relation to specific EU legislation. There have been several Private Members’ Bills over recent years endorsing the principle of disapplication which have sought to achieve this,

159 Q 480

160 See Volume II of this Report, Ev 146. The reference in para 171 is to HC Deb, 16 May 2006, col 945; HC Deb, 10 July 2006, col 509.

and amendments to the same effect were proposed in both Houses to the Legislative and Regulatory Reform Bill in 2006, which were whipped by the then official opposition. Such a development would be much more legally complex and controversial, but we were taken by the logic of the arguments of Professor Chalmers questioning the supremacy of EU law, and we look forward to the Government's detailed response to this proposal.

172. Closely related to this issue, and potential “notwithstanding” provisions, the week before formal agreement of this Report there was considerable coverage in the media of comments by Mr Justice Mostyn concerning the applicability of the Charter of Fundamental Rights to the UK in the High Court case of *R (AB) v Secretary of State for the Home Department*.¹⁶¹ Mostyn J stated that he was surprised that, as a result of a 2011 preliminary ruling of the ECJ,¹⁶² the Charter was now legally binding in the UK as he “was sure that the British government (along with the Polish government) had secured at the negotiations of the Lisbon Treaty an opt-out from the incorporation of the Charter into EU law and thereby via operation of the European Communities Act 1972 directly into our domestic law”.

173. He continued:

The constitutional significance of this decision can hardly be overstated. The Human Rights Act 1998 incorporated into our domestic law large parts, but by no means all, of the European Convention on Human Rights. Some parts were deliberately missed out by Parliament. The Charter of Fundamental Rights of the European Union contains, I believe, all of those missing parts and a great deal more. Notwithstanding the endeavours of our political representatives at Lisbon it would seem that the much wider Charter of Rights is now part of our domestic law. Moreover, that much wider Charter of Rights would remain part of our domestic law even if the Human Rights Act were repealed.

174. These comments, although not legally binding, have called into question whether the full range of rights provided by the Charter apply to the UK or, as the Government considers, only those fundamental rights already existing in EU law. The ruling by the ECJ referred to by Mr Justice Mostyn was in response to a preliminary reference from the UK Court of Appeal and Irish High Court. The questions of interpretation referred to the ECJ concerned Article 3(2) of the Dublin Regulation which provides the criteria to establish which Member State is responsible for examining an asylum claim and the application of the Charter of Fundamental Rights, specifically to the UK. In particular the Court of Appeal asked whether answers to the preliminary ruling questions should “be qualified in any respect so as to take account of” Protocol (No. 30) on the application of the Charter to Poland and to the United Kingdom.

175. The ECJ found that the Protocol does not exempt the UK from the obligation to comply with the Charter nor prevent its courts from ensuring compliance with the Charter. In doing so it noted that in the proceedings before the Court of Appeal, the Government had accepted that, in principle, the fundamental rights set out in the Charter

161 [2013] EWHC 3453 (Admin) available at <http://www.bailii.org/ew/cases/EWHC/Admin/2013/3453.html>

162 C-411/10 and C-493/10, *N.S. v Secretary of State for the Home Department and M.E. v Refugee Applications Commissioner*, 21.12.201, available at <http://www.bailii.org/eu/cases/EUECJ/2011/C41110.html>

could be relied on as against the United Kingdom, and that the purpose of the Charter Protocol was not to prevent the Charter from applying to the United Kingdom, but to explain its effect.

176. We have taken a longstanding interest in the application of the Charter in the United Kingdom. At the time of the negotiations of the Lisbon Treaty and Protocol (No 30), our predecessors expressed doubts about the level of protection offered by the Protocol, particularly in respect of preliminary rulings by the ECJ on the Charter. The then Committee considered that these would be still be binding on the UK because of its existing Treaty obligations, notably the duty of sincere co-operation under the then Article 4(3) TEU.¹⁶³ It concluded:

In our view, the only way of ensuring that the Charter does not affect UK law in any way is to make clear, as we have already suggested that the Protocol takes effect ‘notwithstanding the Treaties or Union law generally’.¹⁶⁴

177. **More recently the Committee Chairman was granted an Urgent Question in the House on 19 November. We hold a related document—the Report on the Commission’s 2012 Annual Report on the Charter on Fundamental Rights—under scrutiny. We have noted as part of the scrutiny process on that Report that to date the Government has expressed a very general view that the Charter only applies when the Member State is implementing EU law and also only to the extent that the rights under the Charter already apply as a matter of ECJ fundamental rights case law. But it has said little of detail on the impact of ECJ preliminary rulings on the Charter on UK law. Given these recent profound developments we will hold an oral evidence session with the Justice Secretary on the implications of this judgment.**

178. **Our predecessor’s suggestion for reinforcing the Protocol was not followed by the then Government. As a consequence, the Protocol appears to offer little safeguard from the application of the entirety of the Charter to the UK when applying EU law, as confirmed by the ECJ in the judgment above. This, we argue, is a direct consequence of Sections 2 and 3 of the European Communities Act 1972, shows some of the potential weaknesses of the European scrutiny system in the House of Commons and might be said to provide support for the suggestion that there should be a Parliamentary power to disapply EU legislation.**

European Council meetings

179. Historically there were regular opportunities for the wider membership of the House to debate the latest developments in the EU around the time of European Council meetings. Until 2010 there were set-piece pre-European Council debates, which ceased when the Backbench Business Committee was created. Some of the Members who gave

¹⁶³ Third Report of Session 2007–08, *European Union Intergovernmental Conference: Follow-up Report*, HC 16-iii. See the then Committee’s conclusions on “The red line in relation to the Charter of Fundamental Rights”, pages 11–12.

¹⁶⁴ HC (2007–08) 16-iii, para 42

evidence to us thought that these debates should be reinstated.¹⁶⁵ Others were a little more cautious, for example Chris Bryant MP, who commented:

I just wonder ... Having, I think, in my 12 years, been to every one, and having heard your single transferable speech immediately before my single transferable speech ... There should certainly be an annual one, and it should be presented by the Prime Minister— I have always thought that—in the Chamber, which should be on the Commission’s work programme, but I wonder whether the quarterly ones should be in Westminster Hall and take one of the slots on a Tuesday or Wednesday afternoon.¹⁶⁶

180. *We recommend that there should be an opportunity for Members in the Chamber to air issues in advance relating to forthcoming European Council meetings, and rather than a debate, we recommend that this should be timed to coincide with a session of Oral Questions on European Union matters (see later in this Report chapter).*

Post-European Council statements

181. It remains the House’s clear expectation that the Prime Minister should make an oral statement to Parliament about the outcome of a European Council. When this did not happen in March 2013, and a Written Ministerial Statement was made instead, an Urgent Question was granted by the Speaker to our Chairman. We followed this up by an exchange of letters with the Prime Minister. The Prime Minister’s letter to us of 23 April concluded that “it is my intention that I will usually update the House by an Oral Statement following European Councils.”¹⁶⁷

182. *We will monitor the provision of Oral Statements following European Councils closely. While we note that the three European Councils since the Prime Minister’s letter have been the subject of an oral statement by the Prime Minister, in two cases the statement also included another subject (on 3 June 2013, events in Woolwich; on 2 July 2013, Afghanistan).¹⁶⁸ Given that the dates of the European Councils are known well in advance, we recommend that the dates of European Council oral statements should also be set well ahead and given to the House by means of a Written Ministerial Statement three times a year. The statement on the European Council should be self-standing.*

Oral Questions on EU matters

183. We heard evidence in favour of the reintroduction of a special session of oral questions on EU matters. Special sessions on “EEC matters” ended in 1985; according to a PQ of 22 March 1985, this was under a temporary arrangement following “representations from hon. and right hon. Members and consultations between the usual channels”.¹⁶⁹ The arrangements for Overseas Development questions (also a “standalone slot”) were not

¹⁶⁵ Q 258 [Gisela Stuart MP]; Q 300 [Martin Horwood MP; Andrea Leadsom MP]

¹⁶⁶ Q 300

¹⁶⁷ Ev w40

¹⁶⁸ HC Deb, 3 June 2013, col 1233; HC Deb, 2 July 2013, col 751

¹⁶⁹ HC Deb, 22 March 1985, cols 622–623W

affected by this change. The next FCO questions, and therefore the first with EEC matters included, took place on 24 April 1985. It was followed by a series of points of order from Members, including the following representations from Eric Deakins MP:

On a point of order, Mr. Deputy Speaker. I wish to draw your attention, in case it has escaped your notice, to the fact that this is the first occasion of the use of the new experimental system under which the 20-minute slot traditionally allocated to European Community questions has been absorbed into the overall hour for Foreign and Commonwealth Office questions ...

I make no complaint about the fact that on this occasion only three European Community questions were reached, instead of the normal seven, eight, or nine which would have been reached under the previous system, but I wish to inform you that this change, which was announced by the Leader of the House just before Easter, on a Friday, in a written parliamentary answer— it having been agreed between the usual channels—does not reflect the feelings of a large number of Opposition Members. I cannot speak for Conservative Members ...

The Leader of the House should take note of the fact that at the end of the experimental period we shall expect to be consulted not merely by our own usual channels but by him, perhaps in a debate on the subject, so that we can make our views absolutely clear. It is wrong that the new questions system should apply to an organisation such as the European Community, which, unlike South Africa, the countries of central America or the countries of eastern Europe, has the power to tax and legislate for the British people. We should have a separate slot to enable us to question Ministers on those matters.

And Eric Forth MP:

Further to that point of order, Mr. Deputy Speaker. Can you advise the House of the length of the experimental period for EEC questions? As we are about to enter a crucial period of major decisions being taken on the EEC, it would be regrettable if hon. Members were denied the opportunity to ask questions on Common Market matters because such questions are now subject to the usual ballot rather than to the certainty of the previous system. Can you say for how long the experiment is likely to run?¹⁷⁰

184. On 7 November 1986, and again in response to a PQ, the Lord Privy Seal confirmed that the experiment “following consultations with the usual channels” would be made permanent and “will take effect with the introduction of the new questions roster”.¹⁷¹

185. Gisela Stuart MP,¹⁷² Chris Bryant MP¹⁷³ and Andrea Leadsom MP¹⁷⁴ all spoke in favour of reintroducing a special session of oral questions on EU matters, though Martin

170 HC Deb, 24 April 1985, vol 77 cols 875–9

171 HC Deb, 7 November 1986, cols 646–7

172 Q 260

173 Q 290

174 Q 301

Horwood MP did not support it.¹⁷⁵ Theresa May MP, at that time Shadow Leader of the House, also spoke favourably about the idea in February 2008.¹⁷⁶ Peter Knowles, Director of BBC Parliament stated:

the idea around having dedicated Europe Questions taken on the floor of the House ... Given the increasing focus on Europe, for the reasons you have given, Mr Chairman, I could see that a regular Europe Questions slot on the floor of the House, in terms of my output, would be really useful.¹⁷⁷

186. The Minister for Europe, however, noted significant potential difficulties — “The problem with this idea is that it would only work on the basis of European Ministers plural, because, as the Committee knows, every Government Department has European responsibilities”.¹⁷⁸ The Minister suggested Westminster Hall as a compromise,¹⁷⁹ but this was rejected in terms by Gisela Stuart MP,¹⁸⁰ and we share her view.

187. Given the profound increase in the transfer of competences to the EU and the pressure for greater integration it is now time to give all Members of the House a regular opportunity to question Ministers specifically on European Union matters. We conclude that a session of oral questions (including a session of topical questions) to the Minister for Europe on EU matters, including other Ministers in a cross-cutting form, should be introduced, and that this should take place on the floor of the House, timed to coincide with the run-up to a European Council meeting. We note the comments by the Minister for Europe about the range of issues which could be covered, but see no reason why Ministers from other Departments could not accompany the Minister for Europe during these sessions. If necessary, the Questions for each session could be themed depending on the matters to be discussed at the European Council.

Commission Work Programme

188. This year we recommended the Commission Work Programme for debate on the floor of the House (rather than European Committee) - a successful debate with contributions from a number of Select Committee Chairs.¹⁸¹ During our visit to the Hague we saw how the Work Programme has been used to provide a means for their sectoral and the European Affairs Committee to prioritise proposals for scrutiny during the year. We make separate recommendations relating to enhanced scrutiny of the Commission Work Programme later in this Report. We expect this to become a regular fixture in the annual scrutiny of EU business and an important ‘forward look’ by the House to forthcoming EU proposals.

175 Q 301

176 HC Deb, 7 February 2008, col 1189

177 Q 239

178 Q 17

179 Q 18

180 Q 260

181 HC Deb, 7 January 2013, col 27

Draft revised Standing Order and resolution relating to business on the floor of the House

16.— (1) The Speaker shall put the questions necessary to dispose of proceedings under any Act of Parliament ~~or on European Union documents (as defined in Standing Order No. 143 (European Scrutiny Committee))~~ not later than one and a half hours after the commencement of such proceedings, subject to the provisions of Standing Order No. 17 (Delegated legislation (negative procedure)).

(2) For proceedings on a European Union document (as defined in Standing Order No. 143, other than those to which paragraph (11) of Standing Order No. 119 applies) the Speaker may permit a member of the European Scrutiny Committee to make a brief statement of no more than five minutes, at the beginning of the debate, explaining that committee's decision to refer the document or documents.

(3) The Speaker may permit Ministers of the Crown to make statements and to answer questions thereon put by Members, in respect of each motion relative to a European Union document or documents referred by the European Scrutiny Committee of which a Minister or, in the case of a motion for a reasoned opinion under Protocol (No. 2) to the Lisbon Treaty, a member of the European Scrutiny Committee, shall have given notice; but no question shall be taken after the expiry of a period of one hour from the commencement of the first such statement: Provided that the Speaker may, if he sees fit, allow questions to be taken for a further period of not more than half an hour after the expiry of that period.

(4) Following the conclusion of the proceedings under the previous paragraph, the motion referred to therein may be made, to which amendments may be moved; and, if proceedings thereon have not been previously concluded, the Speaker shall interrupt the consideration of such motion and amendments after a period of two and a half hours after the commencement of proceedings on the document, and shall then put forthwith successively

(a) the question on any amendment already proposed from the chair; and

(b) the main question (or the main question, as amended).

(5) Business to which this order applies may be proceeded with at any hour, though opposed

New resolution on European scrutiny: opt-in and Schengen opt-out debates, timing of debates and notice of motions

(1) In the case of parliamentary scrutiny of opt-in and Schengen opt-out decisions in relation to new proposals from the Commission, the House notes the commitments made by successive Governments in the Ministerial Statements of 9 June 2008 and 20 January 2011.

(2) That this House agrees that debates on European Union documents referred by the European Scrutiny Committee should take place in a timely manner, and, more specifically, that the Government should undertake to make time available in the House within four sitting weeks of a Committee recommendation for a floor debate (unless the Committee has for any reason waived this requirement or has recommended a tighter timescale). The same applies, *mutatis mutandis*, to a Committee recommendation for a debate in EU Document Debate Committee.

(3) That this House agrees that any motion tabled following a debate in EU Document Debate Committee for consideration without debate on the floor of the House should appear in the

European business section of the Order Paper for at least one sitting day before it is put on the main Order paper for decision, so that Members have the opportunity to consider whether or not to table amendments.

6 Departmental Select Committees

189. House of Commons Departmental Select Committees are appointed under Standing Order No. 152 to scrutinise the expenditure, administration and policy of particular Government Departments. Unlike ‘subject’ committees in some other EU countries, they do not routinely examine legislation; nor are they obliged under Standing Orders to look at EU documents or developments, though we have the power formally to request an Opinion from a Select Committee on an EU document under our Standing Order No. 143(11). The Liaison Committee recently reported on *Select committee effectiveness, resources and powers*, welcoming our inquiry and strengthening the Committees’ relevant core task, which now reads to “scrutinise policy developments at the European level and EU legislative proposals”. In the context of the transposition of EU Directives, new Core Task 5—“To assist the House in its consideration of bills and statutory instruments”—is also, clearly, relevant.¹⁸²

190. Much of the evidence we received emphasised the importance of Departmental Select Committee involvement in scrutinising EU policy because of their knowledge of the wider subject and ability to conduct inquiries. Many other EU national parliaments have ‘mainstreamed’ EU matters wholly or partly to their ‘subject’ or ‘sectoral’ Committees (see the comparative systems Annex to this Report), as have the Scottish Parliament, Northern Ireland Assembly and the National Assembly for Wales. Dr Auel told us that in some of those systems subject committees have become “very involved” in EU issues and that in Finland, for example “in the committees of commerce or environment EU issues take up 60% to 70% of committee time”.¹⁸³

191. We heard (and know from our own experience) that the approach of Commons Departmental Select Committees to scrutinising European issues varies greatly. This is not surprising—for a start, the subject matter covered by some Committees is much more influenced by EU policy than others. There is good practice; the Environment, Food and Rural Affairs Committee was mentioned to us as a positive example during oral evidence¹⁸⁴ and was also the only select committee to submit written evidence in its own right.¹⁸⁵ The Justice Committee produced an excellent Report on complex data protection proposals following our request for an Opinion,¹⁸⁶ and the Transport Committee conducted a follow-up Report on Flight Time Limitations within a short timescale.¹⁸⁷ The Energy and Climate Change Committee responded quickly to an Opinion request, and in the light of its comments we recommended a Commission Communication for debate in European Committee.¹⁸⁸

182 Liaison Committee, Second Report of Session 2012–13, HC 697, Table 2

183 Q 140

184 See Q 140 [Dr Smith].

185 Ev w26

186 Justice Committee, Third Report of Session 2012–13, *The Committee’s Opinion on the EU Data Protection framework proposals*, HC 572

187 Transport Committee, Sixth Report of Session 2013–14, *Flight time limitations: follow-up*, HC 641

188 Eighth Report of Session 2013–14, HC 83–viii, Chapter 2

192. Others, in the words of one Select Committee Chair, recognise that there is a “need to do more”.¹⁸⁹ The memorandum from Dr Julie Smith and Dr Ariella Huff concluded that “while some DSCs have been effective at systematically incorporating the European dimension into their broader scrutiny, others have proven largely unable and/or unwilling to do so.”¹⁹⁰ Members of the European Conservatives and Reformists Group of the European Parliament stated “We work on many proposals of great economic importance to the UK where a more detailed response from one of the Commons Select Committees would be welcome. At the moment, we rely entirely on the House of Lords to provide this detailed examination.”¹⁹¹ The Fresh Start Project commented that DSCs could be “more proactive”,¹⁹² and the Liberal Democrat Parliamentary Party Committee on International Affairs noted the ad hoc nature of current Departmental Select Committee scrutiny.¹⁹³

193. The Minister for Europe said:

I know this Committee has the power to refer particular issues to departmental Select Committees, and sometimes there is a reluctance there to take up the baton, and I think the departmental Select Committees do need to take more seriously their strategic responsibility for an overview of both the formulation and implementation of EU-level policy.¹⁹⁴

194. He added later:

What I am seeking, whatever institutional form this takes, is something of a cultural change in the House to regard European business as mainstream however we do European business. In those circumstances, we would need to look again at the Standing Orders of the House to reinforce that the European aspect of a Select Committee’s responsibilities is something that is core.¹⁹⁵

195. The Rt Hon Sir Alan Beith MP, Chair of the Liaison Committee and of the Justice Committee, urged us not to “discount” what was already being done by Select Committees.¹⁹⁶ He observed that there was an “additional barrier” to such inquiries;¹⁹⁷ explaining that “unless you have been able to establish that something that is doing the rounds in the Commission is going somewhere then you risk taking up a lot of Committee time on things that will not be productive in the end.”¹⁹⁸ He also noted that “each Chairman is juggling a very considerable workload”.¹⁹⁹ Nonetheless, even after taking all

189 Q 151 [Rt Hon Keith Vaz MP]

190 Ev w10, para 5

191 Ev w3, para 9

192 Ev w1, para 1(g)

193 Ev w19, Annex 1, para 1

194 Q 1

195 Q 12

196 Q 152

197 Q 150

198 Q 150

199 Q 159

these factors into account, he concluded that “there is a great deal more that can and should be done.”²⁰⁰

Liaison between the European Scrutiny Committee and Departmental Select Committees

196. There are currently systems of informal and formal liaison between the European Scrutiny Committee and Departmental Select Committees. After each Scrutiny Committee meeting the staff of other Committees are notified of the outcome, and relevant briefing material is made available to them. Departmental Select Committee Chairs are also notified of debate recommendations to European Committee, so that their Committees can nominate members.

197. The formal power is that given under Standing Order No. 143(11) to the European Scrutiny Committee, “to seek from any committee specified in paragraph (12) of this order an opinion on any European Union document, and to require a reply to such a request within such time as it may specify.” This power was originally introduced in 1998 and represents an unusually strong power for one select committee to possess. When it was introduced the Modernisation Committee stated that it should be used “sparingly in the first instance”.²⁰¹

198. We requested 12 Opinions in Session 2010–12, two in Session 2012–13 (in several other cases Committees announced inquiries into specific measures at the same time as our scrutiny, rendering a formal Opinion unnecessary); and five to date in Session 2013–14. The format of the responses has varied. Some have been in the form of letters from the Chair of the relevant Committee. Two Opinions requested of the International Development Committee fell within an inquiry which it was already conducting. The International Development Committee wrote to us outlining its findings subsequent to producing a Report. Two, from the Justice and Transport Committees, were in the form of Reports based on a series of evidence sessions and written evidence submissions, as we have already noted.

199. The Liaison Committee memorandum suggested that there was scope for more use of Opinions, though it added the caveat that “the right of individual Committees to determine their work programmes” should be respected,²⁰² and one of the Chairs giving evidence to us expressed some concerns about the volume of extra work which would be involved if many Opinions were requested.²⁰³ As we have already noted, given the potential significance of White Papers and Green Papers at the earlier stages of the policy process, we are considering referring these to DSCs for Opinion more frequently, and have noted the Liaison Committee’s view that there is scope for more Opinions to be issued.

200 Q 152

201 Modernisation Committee, Seventh Report of Session 1997–98, HC 791, para 35

202 Ev w24, para 6

203 See Qq 163–4 [David T C Davies MP].

Upstream engagement

200. We set out some of the evidence we received about engagement at the initial stages of policy development earlier in this Report. We heard from the Rt Hon Sir Alan Beith MP that the Liaison Committee had been in discussions with the Minister for Europe on how to improve the flow of ‘upstream’ information on EU policies to Westminster.²⁰⁴ When we first took evidence from the Minister for Europe he confirmed that:

We are also considering across Government a proposal that the more senior officials in UKRep and other posts offer oral off-the-record briefings to parliamentary Committees, including the European Scrutiny Committee. That is something that will have to be agreed on a cross-Government basis, because this would involve some officials who are parented to departments other than the Foreign Office, but that I think is indicative of the approach we want to see for greater engagement.²⁰⁵

201. Links between UKRep and the NPO are already being further developed following discussions between the Minister for Europe and the Liaison Committee and we hope that this, coupled with our earlier recommendation to widen access to the material which the NPO produces, will improve upstream engagement of Committees. Dr Julie Smith emphasised the importance of utilising information received from the NPO and its links with UKRep to influence EU policy at an early stage.²⁰⁶ As the written evidence from the Liaison Committee noted, gaining access to the expertise of UKRep in Westminster could further enhance a Committee’s ability to engage at a sufficiently early stage in the EU policy formation process.²⁰⁷ In his evidence to us Sir Jon Cunliffe said that UKRep would be “very happy” to assist Committees in informal briefings, however he added a caveat stating “the policy on these issues is not owned by UKRep”.²⁰⁸

202. Following these discussions what looked to be a promising initiative has not progressed as fast as had been hoped. The Minister for Europe told us:

We made it clear, in our discussions with the scrutiny coordinators across Whitehall, that we think this is a sensible approach, but it is ultimately for the Ministers in each Department to decide, case by case, whether they will agree to a request from the Committee or take the initiative and offer this ... I encourage my colleagues to do that, but I cannot order them.²⁰⁹

203. This is the subject of ongoing discussions between the Liaison Committee and the Minister for Europe. In our view, a solution must be found in line with parliamentary accountability, and which will enable Departmental Select Committees to pursue their policy analysis, while we retain our sifting role.²¹⁰

204 Q 150

205 Q 29

206 Q 119

207 Ev w24, para 7

208 Q 417

209 Q 533

210 The reference in para 204 is to Modernisation Committee, Seventh Report of Session 1997–98, Memorandum by the Select Committee on European Legislation, HC 791, Appendix 1, para 78 and the reference in para 205 is to Q 143.

Conclusion

204. We recognise that much of the strength of Departmental Select Committees comes from their autonomy and the independence they have to set their agenda. We are aware that our colleagues on Departmental Select Committees already have busy work programmes and it is also right to acknowledge that for some Committees EU matters may prove divisive. For all these reasons there appears to be no appetite for full mainstreaming of EU legislative scrutiny to Departmental Select Committees, but in our view the current situation is not sustainable. It is 15 years since our predecessor Committee wrote to the Modernisation Committee concluding that “There has been wide agreement that DSCs ‘should do more about Europe’, but in practice nothing much has happened.” The fact that the debate still has a similar tone, given all that has happened in the EU over those 15 years, is disappointing.

205. We have already concluded that we should retain our sifting, overarching remit: we provide a crucially-important mechanism for the House to focus on the most important proposals on the basis of a judgement made by elected politicians, with expert support. But it is clear to us that without broader analysis conducted across the Departmental Select Committee system the scrutiny process is incomplete. As Dr Julie Smith put it “you need to find a way of making select committees feel there is a reason for looking at Europe”: the question is, how can this be done in a way which is effective, but also manageable at individual Departmental Select Committee level? We therefore seek to propose changes which introduce more coherence across the House, building on significant recent activity at official level, for example by the re-establishment of the network of Departmental Select Committee staff ‘contact points’ and regular meetings between these staff and those of the European Scrutiny Committee and the NPO.

A greater sense of coherence and prioritisation — Commission Work Programme

206. We believe that more use could be made of the Commission Work Programme. Dr Katrin Auel noted that it had been used as a cue to set priorities in the Netherlands, which we also heard when we visited the Tweede Kamer.²¹¹ The Tweede Kamer produces an annual document, *EU Scrutiny*, which contains a list of the proposals from the Work Programme which have been prioritised by Standing Committees. The final list is discussed by the Standing Committee on European Affairs and then approved by the plenary. A COSAC questionnaire conducted in 2011 revealed that seven Parliaments/Chambers used the published Work Programme to define priorities for scrutiny.²¹²

207. Other witnesses, for example the Minister for Europe,²¹³ the Liberal Democrat PPC on International Affairs,²¹⁴ Gisela Stuart MP,²¹⁵ and Andrea Leadsom MP,²¹⁶ all raised the

211 Q 122

212 COSAC, Fifteenth Bi-annual Report: *Developments in EU procedures and practices relevant to parliamentary scrutiny*, May 2011, para 4.1.2

213 Q 41

214 Ev w20, para 6(c)

215 Q 254

potential advantages of working in a more strategic way, and the written evidence from the FCO commented that an early debate on the Work Programme could “help identify areas of policy concern for both Parliament and Government”²¹⁷ though Sir Jon Cunliffe noted some of the Work Programme’s limitations as a document, particularly the general terms in which it is drafted, acknowledging that “it is a pretty difficult document to wrestle with. Much of it is aspiration rather than concrete plan ... but we have that document, which suggests areas of action where the Commission intends to bring forward proposals.”²¹⁸

208. Professor Simon Hix noted that the election of a new President of the Commission might change the nature of the Programme:

I can imagine that if there are rival candidates for the Commission Presidency next spring and a Commission President is then chosen through this mechanism, the Commission President will feel that he or she has a much clearer mandate. I then think you will see the work programme take on a different characteristic ... If that is the case, then I think the work programme could be much more useful as a tool for national parliaments and governments and the European Parliament to hold the Commission to account on the types of promises of the things it wants to deliver.²¹⁹

209. *We recommend that the House, through the European Scrutiny Committee and Departmental Select Committees, produces a document along the lines of the Netherlands model. All Departmental Select Committees would be expected to set out which of the proposals in the Programme they will aim to scrutinise, forming the basis for a debate which takes place in the House at the beginning of the Work Programme period. Should a Departmental Select Committee indicate to us that it saw a document as particularly worthy of debate, we would take account of that. We as a Committee would also continue to review the Work Programme. The Government would then use this information as a basis for making commitments to hold debates on particular documents, following discussions with this Committee (and without prejudice to our right to refer documents for debate). The Work Programme for the coming year is usually published in the autumn and comes into effect in January, so the timeframe for doing this would typically be November and December. We would publish a Report for debate on the floor of the House setting out our priorities and those of the Departmental Select Committees.*

210. At the very least this would introduce a sense of common purpose, and progress from the current situation where, as the Rt Hon Keith Vaz MP, Chair of the Home Affairs Committee, said, that the “worst thing is everybody doing things separately”.²²⁰ It would also link to the concept of upstream scrutiny which has already been considered in this Report and has been the subject of correspondence since 2011 between the FCO and the Liaison Committee.²²¹ It could provide an appropriate ‘nudge’ to Departmental Select Committees at the beginning of the year to at least consider which European proposals

216 Q 289

217 Ev w7, para 14

218 Q 414

219 Q 460

220 Q 151

221 Ev w25

might be the most significant in their area, and how work on these could fit into their other activity. But on its own this is unlikely to be sufficient.

European Reporters

211. The Liaison Committee memorandum stated:

We believe there may be merit in adopting the Scottish Parliament Committee model of appointing a Member to act as a Rapporteur to monitor developments in the European Union in their subject area.²²²

212. The Rt Hon Sir Alan Beith MP, in his oral evidence, stated that in his view:

as far as rapporteurs are concerned, Committees do need the freedom to experiment and develop tools that work for them; that has certainly been the approach of the Liaison Committee: to recommend ideas without saying, ‘This is the way every Committee has got to do it.’ It may depend also on the personalities you have on the Committee. If you have got somebody who is prepared to take on a more continuous responsibility for Europe-related issues, primarily to alert other Members as appropriate, then Committees should feel free to take that step.²²³

213. Several of the Members we took evidence from, including Chris Heaton-Harris and Richard Bacon²²⁴ were in favour of the Reporter proposal. We also heard from members of the Scottish Parliament at an informal video-conference meeting that, on balance, it had worked well there; an evaluation of the role at the end of the pilot period concluded:

There remain different views as to whether there is benefit in retaining the EU Reporter role as presently defined. On balance, it is considered that there is merit in retaining the role of EU Reporter, clearly defining the role and responsibilities, which are far greater than the weekly scrutiny of EU documents. The role of the EU Reporter is to act as ‘champion’ for EU matters within the committee. This will involve promoting the European dimension in the work of the committee, taking the lead on EU early engagement and in developing relationships with the European Commission and European Parliament, leading the committee’s EU scrutiny work, promoting and speaking to European issues, highlighting the European dimension within policy debates and acting as a conduit between the committee and the European Committee of the Scottish Parliament. It is recommended that the role should be reviewed after an agreed period (e.g. 12 months).²²⁵

214. David T C Davies MP, Chair of the Welsh Affairs Committee, expressed concerns about Reporters in general, describing this as “opening up a bit of a Pandora’s box”.²²⁶ Dr Ariella Huff noted that it might not be a particularly popular position, and “a very difficult

222 Ev w24, para 11

223 Q 176

224 Q 309

225 EU scrutiny, Evaluation of pilot report, para 37, http://archive.scottish.parliament.uk/s3/committees/europe/reports-11/EU_scrutiny.pdf

226 Q 165

sell”;²²⁷ Dr Julie Smith commented that “It might not be my first choice ... but we are not in a perfect world and it would at least mean there would be some European expertise developed in each of the select committees”.²²⁸ Responses to these questions on our survey were finely balanced.

215. The idea of Committee Reporters (or Rapporteurs) is not a panacea. It is also not a new idea—the Modernisation Committee recommended that select committees “experiment” with appointing one of their members as a Rapporteur on a specific task over 10 years ago,²²⁹ and our predecessor Committee developed that idea to suggest that Departmental Select Committees “or at least those in subject areas with much EU legislation” considered appointing a European Rapporteur to “keep a watching brief on developments in the EU, and whom we could consult and pass information to.”²³⁰ We note that the Liaison Committee looks favourably on the idea, but as a voluntary step.

216. We take the view that, Committee autonomy notwithstanding, it is clear that the existing approach to EU scrutiny within Departmental Select Committees needs improvement. We see engagement with the Work Programme as a way of setting priorities, and in order for this to work during the year it also requires ongoing engagement at Member level. We therefore recommend that the requirement to appoint a European Reporter on each Departmental Select Committee should be written into Standing Orders. This could be reviewed after the system has operated for two years.

217. If this is agreed to, we note that a number of practical questions remain to be resolved through discussion in the Liaison Committee: How would Reporters be chosen by Departmental Select Committees? Could there be more than one per Committee? Would there need to be some kind of co-ordination across the House of which political party they were from? What resources, if any, would they need to do their job effectively? What precisely should their role be? Could Members seeking election for membership of Select Committees within their parties, for example, publicise that they would seek to take on this role? Should Reporters be required to sit on European Committees?

218. We think that the combination of European Reporters, and a more systematic approach to the Commission Work Programme, could mark a significant shift in the way the House as a whole approaches EU business. We hope that the Liaison Committee will take these recommendations forward.

227 Q 141

228 Q 144

229 Modernisation Committee, First Report of Session 2001–02, *Select Committees*, HC 224, para 34

230 European Scrutiny Committee, Thirtieth Report of Session 2001–02, *European Scrutiny in the Commons*, HC 152-xxx, para 87

7 European Committees

220. European Committees play a key role in the scrutiny process as currently constructed—being the mechanism for the House to debate and determine its political judgement on those documents judged as particularly important by this Committee.

History

221. Until the early 1990s referred documents were automatically debated on the floor of the House unless the Government tabled a motion to refer them to a Standing Committee. The default was then changed to referral to European Standing Committees. The then European Legislation Committee was still able to recommend that a document be debated on the floor of the House, but the decision on whether or not that floor debate took place was in the Government's hands. This remains the case today.

222. Until 1998 there were two European Standing Committees; this number was increased to three in 1998 in response to criticism that the committees' portfolios were too large. Those European Standing Committees had permanent memberships of 13, appointed sessionally until 1998 and thereafter for the length of the Parliament.

223. The Minister for Europe spoke in glowing terms about this period when giving evidence to us in 2011, stating that:

There is no doubt that under that system, with genuine Standing Committees, Members were able to acquire a working knowledge or expertise in a particular area of European policy. One just became familiar with the various acronyms and pieces of jargon—for example those embodied in measures on agricultural policy.²³¹

224. The then ESC Chairman wrote to core members of the Standing Committees in June 2004, noting criticisms of the system made in the Leader of the House's memorandum to the Modernisation Committee inquiry, and noting also that the Scrutiny Committee had put forward a series of reform proposals, including elected Chairmen.²³² The Modernisation Committee recommended in 2005 that the number of Committees should increase to five, retaining their permanent membership.²³³

225. But the situation changed, much for the worse, following the 2005 General Election. Sessional Orders were made to set aside the requirement of Standing Order No. 119 for a permanent membership and to replace this with a provision for the Committee of Selection to nominate new and different members to the Committees for each debate. We were told that the change was necessary because of problems with poor attendance and difficulties getting Members to serve on the Committees; the Minister for Europe commented:

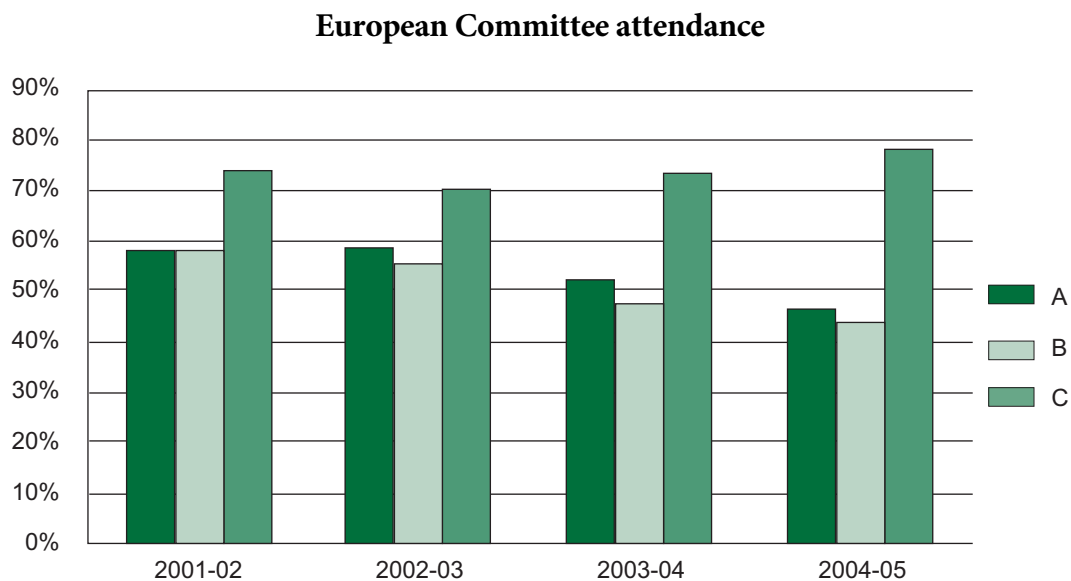
231 Q 80; Thirtieth Report of Session 2010–12, *Opting into international agreements and enhanced scrutiny of opt-in decisions*, HC 955

232 Letter from Jimmy Hood MP, *European Standing Committees and the Modernisation Committee inquiry*, dated 9 June 2004.

233 Modernisation Committee, Second Report of Session 2004–05, *Scrutiny of European Business*, HC 465-I, paras 92–94

My own view is that permanent membership would be an improvement provided you genuinely had the commitment from those members appointed to it. As I understand it, the system was changed because the Government of the day, and I suppose it was the usual channels of the day, were finding it more and more difficult to get members of all parties who were willing to give that degree of commitment ... they found that attendance was slipping badly in the latter years of the permanent committee membership.²³⁴

226. The statistics tend to bear out this overall picture, with overall attendance figures for the then Committees A, B and C being as follows in the 2001–05 Parliament:



227. Following 2005 Sessional Orders were made each year until ad hoc membership was made permanent from 1 January 2009 as part of the package of reforms to the House's scrutiny system which saw the Committees renamed European Committees. These reforms were meant to make ad hoc membership more targeted — with two European Scrutiny Committee members, two Departmental Select Committee members, whips and spokesmen.²³⁵ Those members of the House who have not been nominated to the Committee remain able to attend, speak and move amendments to the Government's motion. They cannot vote.

228. The potential of the system is clear. We heard particularly powerful evidence from Gisela Stuart MP about her time as a Minister preparing for a debate in European Committee:

When I first became a Minister, Jeff Rooker, who was then a fellow Birmingham MP, said to me 'Kiddo, you had better go into one of those and watch them, because sooner or later you will have to appear in front of them, and they are the toughest Committees to appear in front of'. Structurally, I think they are the scariest meetings you can go to as a Minister, because you have to answer and relentlessly answer follow-up questions. You do not even know who is going to be there ... They are

234 Q 8

235 See para 7

really good Committees—potentially, I think, a real nuclear weapon, because you are really exposed as a Minister, you really cannot hide anywhere.²³⁶

229. Yet we were also told that the Committees were “off the radar” of the broadcasters;²³⁷ and there was further, broad, consensus that the current system has significant problems, with some going so far as to describe it as “dysfunctional.”²³⁸ The FCO commented that some debates “have been sparsely attended or have been concluded very quickly.”²³⁹ The Liberal Democrat PPC on International Affairs recommended scrapping the Committees altogether, citing a lack of engagement and poor timetabling.²⁴⁰ Chris Bryant MP spoke about the problem of long delays in scheduling debates which rendered them pointless when they took place, likening the eventual debates to “when somebody writes to the MP about the planning decision that was taken last night by the council”.²⁴¹ In September 2013 there was a striking example of this when European Committee B debated a set of documents, relating to measures to reduce financial fraud against the EU, which had been adopted by the Council in February.²⁴²

230. Others spoke of further practical problems - short notice of meetings²⁴³ and too many papers.²⁴⁴ 66% of the Members who responded to our survey agreed that one of the weaknesses of the current system was that “Members do not know enough about the subjects covered”.

231. Our suggestions for the ESC Members to serve on particular European Committees have not always been accepted by the Committee of Selection, and there have been recent examples of European Committees meeting at the same time as the Select Committees with the same portfolio or as the ESC.²⁴⁵ We have taken this up in correspondence both with the Committee of Selection and the Government Chief Whip. The Chairman of the Committee of Selection undertook in response that his Committee would use its “best endeavours to ensure that wherever possible members on the European Scrutiny Committee who volunteer for European Committees are chosen to do so” — and we have noted improvements since the letter was received.²⁴⁶

232. On the timing point, the Government Chief Whip replied:

I can assure you that every effort is made to avoid committees clashing with European Scrutiny Committee meetings, but there will be occasions where this may be difficult ... A further complication is the change to the sitting times which makes it

236 Q 251

237 Q 209

238 Q 307. See also Ev w13, para 17.

239 Ev w7, para 18

240 Ev w20, para 9

241 Q 280

242 *Gen Co Deb*, European Committee B, *Financial management and audit*, 3 September 2013

243 Q 277 and Q 282 [Andrea Leadsom MP]

244 Q 285 [Martin Horwood MP]

245 Q 176 [Rt Hon Sir Alan Beith MP]

246 Ev w43

difficult to provide a two and a half hour slot during those mornings on which the House meets earlier ... The European Scrutiny Committee may want to give consideration to a change in the Standing Orders to reduce the time available for committee debates to one and a half hours in line with other general committees. This would provide far more flexibility as to when committee debates could be scheduled in the future.²⁴⁷

233. Despite the evidence of very real problems with the operation of and Member engagement with the European Committees as currently constituted we do not believe it is time to abolish them. Not every referred document can be debated on the floor of the House, but there must be a mechanism for an informed debate on the Government's approach. We therefore recommend a combination of old and new measures which in our view would reinvigorate this component of the system.

Conclusions

Membership

234. *We remain of the opinion that the best solution would be to revert to the previous system of permanent membership. Moreover, giving European Committees a permanent membership, with a permanent Chair, would enable them to make decisions about their business and timetabling, as well as developing expertise among their members and potentially making them more independent from the Whips. It would also give interest groups the opportunity to make their views known in advance to members of the relevant Committee. Given the impact of EU legislation on the voter, and the fact that many matters which come before European Committees would be the equivalent of an Act of Parliament—and have not necessarily originated from Government policy—we recommend that European Committees should not be whipped.*

Nomenclature

235. The FCO memorandum proposed, in the context of transparency, that the “Standing Committees [sic] might also consider for instance designating themselves by names that clearly indicate their functional ambit, rather than letters ... We recognise however that it is difficult to come up with a generic name for the three committees given the range of departments covered.”²⁴⁸

236. It is difficult to see how the change proposed by the FCO could be brought about. However, it is clear that there is often confusion between the European Scrutiny Committee and the European Committees (and confusion with the House of Lords EU Committee), so in our view there is a strong case for a change of name. **The role of these Committees is questioning the Government about its negotiating approach on particular documents, and considering the wording of the motion to be considered on the floor of the House about the Government's position on those documents. We**

247 Ev w40

248 Ev w8, para 22

therefore recommend that they should be renamed as EU Document Debate Committees.

Chairs and procedures

237. Our new EU Document Debate Committees should also have permanent Chairs. We see considerable merit in these Chairs being elected, and possibly the Committee Members too. We also believe that Members of the House who are not members of the Committee should be permitted not just to attend and move amendments, but also—crucially—to vote. In this way the independence of the Committees would be guaranteed and it would enable all Members of the House to determine, not merely suggest, the form of the motion which goes to the floor of the House (on the assumption that the Government accepts our recommendation later in this chapter that it should commit to tabling in the House the motion agreed to by the Committee).

238. We further recommend that EU Document Debate Committees should be given power to vary the way they conduct their business, for example: to dispense with the Ministerial statement, and proceed straight after the explanatory statement by the ESC Member to the debate on the Motion; to agree to reduce the length of the sitting of the Committee from two and a half hours to an hour and a half; to debate certain documents together; or to permit a member other than the Minister to move the motion (for example, in the case of a Reasoned Opinion, to allow this to be moved by a member of the European Scrutiny Committee). In order to do this the Committee would deliberate in public in exactly the same way as a Public Bill Committee considering a Programme Motion.

239. We recommend that similar provisions on timing should apply to EU Document Debate Committees as we have recommended for debates on the floor of the House: that the Government should undertake to ensure that the debate takes place within four sitting weeks of a Committee recommendation (unless the Committee has for any reason waived this requirement, or—indeed—has suggested a tighter timescale).

240. Finally, we recommend that delegated legislation introduced under the European Communities Act which requires affirmative resolution (and would therefore normally fall to be considered by a Delegated Legislation Committee) should also be taken in the relevant EU Document Debate Committee. This would be one way of accommodating the recommendations from the Chair of the EFRA Committee about introducing amendable motions in Delegated Legislation Committees cited earlier in this Report.

Motions in European Committee

241. Currently only a Minister can move a motion in European Committee. However, other members of the Committee and, indeed, other members of the House, may table amendments. There has been discussion about what should happen if the Committee amends the Government motion ever since European Standing Committees were established.

242. The Procedure Committee stated in 1991 that the fact that the Government could move the original motion on the floor following amendment in Committee made “a

mockery of the scrutiny process and constitutes a waste of the Standing Committee's time and effort."²⁴⁹ Our predecessor Committee's 2002 Report on the scrutiny system recommended that "the motion moved in the House on an EU document should always be that agreed by the European Standing Committee, that if the Government does not wish to move it another Member should do so, and that in such circumstances a brief explanatory statement by the mover and a Minister should be permitted".²⁵⁰ The Government's response stated that it disagreed with this proposal.²⁵¹

243. The then Deputy Leader of the House noted in 2008 that the then Government "recognise[d] the long running view expressed by previous Committees, including by the Modernisation Committee in 2005, that the motion tabled [in the House] should be the one agreed by the [European] Committee." We recommend that the Government should set out a commitment that the motion tabled in the House should be the motion agreed by the EU Document Debate Committee.

244. A particular issue has arisen with Reasoned Opinions, where there have been cases where a Minister has had to move a motion relating to a Reasoned Opinion proposed by the ESC, even when the Government did not agree with it. As we have already noted, the Procedure Committee reported in 2011 and recommended that in these cases the "motion [should] appear in the name of the Chair of the European Scrutiny Committee or in the name of another member of the Committee acting on its behalf." The Government's response rejected this. We ask the Government to reconsider its opposition to this change.

245. We recommend that a new resolution of the House provide that any motion tabled following a debate in EU Document Debate Committee for consideration without debate on the floor of the House should appear in the European Business section of the Order Paper for at least one sitting day before it is put on the main Order Paper for decision, so that Members have the opportunity to consider whether or not to table amendments.

Guidance and advice

246. It is noteworthy that on a number of recent occasions there has been confusion about the procedures involved in European Committee sessions. We therefore intend to work with the House authorities to produce further guidance on this process.

249 Procedure Committee, First Report of Session 1991–92, *Review of European Standing Committees*, HC 31, para 41

250 European Scrutiny Committee, Thirtieth Report of Session 2001–02, *European Scrutiny in the Commons*, HC 152-xxx, para 73

251 Second Special Report of Session 2001–02, *European Scrutiny in the Commons: Government Observations on the Committee's Thirtieth Report of Session 2001–02*, HC 1256. The reference in para 243 is to HC Deb, 7 February 2008, col 1181; and the references in para 244 are to para 159 (See also Gen CO Deb, European Committee B, Investor Compensation Schemes, 21 October 2010.) and to the Procedure Committee, First Special Report of Session 2012–13, HC 712.

Draft revised form of Standing Order No. 119

119. —

(1) There shall be three general committees, called EU Document Debate Committees, to which shall stand referred for consideration on motion, unless the House otherwise orders, such European Union documents as defined in Standing Order No. 143 (European Scrutiny Committee) as may be recommended by the European Scrutiny Committee for further consideration.²⁵²

(2) Each EU Document Debate Committee shall consist of sixteen Members nominated for the duration of a Parliament by the Committee of Selection; and in nominating such Members, the Committee of Selection shall —

(a) have regard to the qualifications of the Members nominated and to the composition of the House;

(b) shall nominate at least two members of the European Scrutiny Committee, and members of select committees appointed under Standing Order No. 152 whose responsibilities most closely relate to the subject matter of the Committee.

(c) have power to discharge Members from time to time, and to appoint others in substitution.

(4) The Chair of each EU Document Debate Committee shall be appointed from the Panel of Chairs for the duration of the Parliament.

(5) The quorum of an EU Document Debate Committee shall be five, excluding the chair.

(6) Any Member, though not nominated to a EU Document Debate Committee, may take part in the committee's proceedings and may move amendments to any motion made as provided in paragraphs (9) and (10) below, make a motion as provided in paragraphs (9) and (10) below, and vote, but such a Member shall not be counted in the quorum.

(7) The EU Document Debate Committees, and the principal subject matter of the European Union documents to be referred to each, shall be as set out below; and, in making recommendations for further consideration, the European Scrutiny Committee shall specify the committee to which in its opinion the documents ought to be referred; and, subject to paragraph (2) of this order, the documents shall be referred to that committee accordingly

EU Document Debate Committees

Principal subject matter

Matters within the responsibility of the following Departments

A

Energy and Climate Change, Environment, Food and Rural Affairs; Transport; Communities and Local Government; Forestry Commission; and analogous responsibilities of Scotland, Wales and Northern Ireland Offices.

B

Work and Pensions; Foreign and Commonwealth Office; International Development; Home Office; Ministry of Justice (excluding those responsibilities of the Scotland and Wales Offices which fall to European Committee A); together with any matters not otherwise allocated by this Order.

C

Business, Innovation and Skills; Education; Culture, Media and Sport; Health; HM Treasury (including

²⁵² Note: 119(4) is drafted on the basis of a permanent appointed Chair. See also para 237. This Standing Order also proposes a re-allocation of HM Treasury business from Committee B to Committee C.

HM Revenue & Customs);

(8) The chair may permit a member of the European Scrutiny Committee to make a brief statement of no more than five minutes, at the beginning of the sitting, explaining that committee's decision to refer the document or documents to an EU Document Debate Committee.

(9) The chair may permit Ministers of the Crown, or, in the case of a motion for a reasoned opinion under Protocol (No. 2) to the Lisbon Treaty, the chair or a member of the European Scrutiny Committee, to make statements and to answer questions thereon put by Members, in respect of each motion relative to a European Union document or documents referred to an EU Document Debate Committee of which a Minister shall have given notice; but no question shall be taken after the expiry of a period of one hour from the commencement of proceedings: Provided that the chair may, if he sees fit, allow questions to be taken for a further period of not more than half an hour after the expiry of that period.

(10) Following the conclusion of the proceedings under the previous paragraph, the motion referred to therein may be made, to which amendments may be moved; and, if proceedings thereon have not been previously concluded, the chair shall interrupt the consideration of such motion and amendments when the committee shall have sat for a period of two and a half hours, and shall then put forthwith successively

(a) the question on any amendment already proposed from the chair; and

(b) the main question (or the main question, as amended).

The chair shall thereupon report to the House any resolution to which the committee has come, or that it has come to no resolution, without any further question being put.

(11) The Committee may resolve to vary the timings in paragraphs (9) and (10) of this Order on the basis of a motion which can be moved by any member of the Committee.

(12) If any motion is made in the House in relation to any European Union document in respect of which a report has been made to the House in accordance with paragraph (10) of this order, the Speaker shall forthwith put successively

(a) the question on any amendment selected by him which may be moved;

(b) the main question (or the main question, as amended);

and proceedings in pursuance of this paragraph, though opposed, may be decided after the expiration of the time for opposed business.

(14) With the modifications provided in this order, the following Standing Orders shall apply to EU Document Debate Committees

No. 85 (Chair of general committees);

No. 88 (Meetings of general committees); and

No. 89 (Procedure in general committees).

8 The visibility of scrutiny and the media

247. One of the aspects of this inquiry which is different to those of our predecessors in 1996 and 2002 is the emphasis we have placed on the public face of the Committee's work. This reflects wider concerns both about the lack of knowledge about the scrutiny system, voiced for example by the Liberal Democrat Parliamentary Party Committee who referred to it as "too hidden";²⁵³ and about the level of public debate about EU matters in the UK, with Dr Julie Smith, for example, describing the "depth of ignorance rather than the depth of interest".²⁵⁴

248. We therefore took evidence from the BBC; ITV and Sky; and David Keighley of the organisation Newswatch. We also spoke to journalists during our visit to Brussels. We have drawn on the points made by witnesses throughout this Report — for example relating to the work of European Committees and debates on the floor of the House. But as well as drawing directly on this experience, we also questioned our witnesses on how the media reports on the EU question, such as the definition of impartiality.

The role of the media

249. Whether and how the media tells the public what this Committee does is a critical factor in whether we have any public profile at all and whether the public is properly informed as to the impact of EU legislation. For example, our recent Report on the JHA Block opt-out²⁵⁵ received virtually no attention or comment despite its vital importance. As Dr Katrin Auel noted, media coverage is where most people get their information from.²⁵⁶ Gisela Stuart MP commented that there was a particular role for better journalism relating to the EU across the media: "if the journalists themselves do not understand it — and I would suggest quite a number of them do not — then they cannot distil a complex message in a way that is understandable, which ought to be their trade."²⁵⁷ John McAndrew, Associate Editor of Sky News, neatly made the point:

What we should do is give it due prominence when there is a story in or around Europe that is going to affect the lives of people who watch our television channel or consume our output in other ways. If you take the horsemeat scandal, the euro crisis, Cyprus, various EU summits of late — where we have been a heavy presence in Brussels — we can explain to people why these things are current, why they matter to them and what the consequences might be for people in this country.²⁵⁸

250. We had a particular set of questions for the BBC, given its unique position as the publicly-funded, public sector broadcaster and also as an organisation which has been the

253 Ev w19, para 5(f)

254 Q 118

255 Twenty-first Report of Session 2013–14, *The UK's block opt-out of pre-Lisbon criminal law and policing measures*, HC 683

256 Q 148

257 Q 274

258 Q 360

subject of several independent reviews assessing its EU coverage. David Keighley of Newswatch commented to us that “Most broadcasters think that coverage of EU affairs is quite difficult ... I would not say that the BBC is particularly worse or better than others in that respect ... Lord Wilson drew attention to ... [the fact] that the BBC has that special responsibility.”²⁵⁹ His written evidence expressed concerns that “Euroscepticism, including the case for withdrawal, is supported by MPs and Peers in both the Conservative and Labour parties, and by large sections of the public, but has been disturbingly under-reported by the BBC.”²⁶⁰ His later evidence stated:

In my view, it is clearly incumbent upon the BBC to report such matters not only in the specialist Parliamentary output but also on mainstream news and current affairs programmes. That they do not shows a cultural assumption and editorial mind-set that the EU is inevitably a good thing, which doesn’t deserve any detailed or critical scrutiny. Wilson was very precise in what he expected the BBC to do. Eight years on, they stubbornly refuse to implement his recommendations.²⁶¹

251. The Wilson review referred to by David Keighley was an independent review of the BBC’s news coverage of the European Union, which reported in January 2005.²⁶² The review was chaired by Lord Wilson of Dinton, the former Cabinet Secretary, and found that “[I]n short ... the BBC’s coverage of EU news needs to be improved and to be made more demonstrably impartial”.²⁶³ A series of commitments and initiatives were made and taken by the BBC in the light of the review, including the appointment of a Europe Editor based in Brussels,²⁶⁴ a renewed focus on training “to improve BBC journalists’ understanding of the complexities of Europe”²⁶⁵ and new arrangements to “involve programme editors in regular discussions about the BBC’s coverage of Europe”.²⁶⁶

252. We questioned a group of witnesses from the BBC about events since the Wilson Review. They stated that the appointment of the Europe Editor was “The biggest single thing, which made a real impact on air”,²⁶⁷ and added that there had also been significant improvements in the training for journalists.²⁶⁸

259 Q 325

260 Ev w28, para 8

261 Ev w36. See also the article by Roger Mosey, a senior former BBC executive, in *The Times*, 8 November 2013, in which he commented that “On the BBC’s own admission, in recent years it did not, with the virtue of hindsight, give enough space to anti-immigration views or to EU-withdrawalists”, and the book by Robin Aitken, *Can we trust the BBC?*

262 BBC News Coverage of the European Union, Independent Panel Report, January 2005 (available via the BBC Trust website)

263 BBC News Coverage of the European Union, Independent Panel Report, January 2005 (available via the BBC Trust website), p 3

264 Currently Gavin Hewitt, who has also published a book *The Lost Continent: Europe’s darkest hour since World War II*.

265 As respects the training of journalists, we note reports that a charity called BBC Media Action is in receipt of £4.5 million from the EU (see <http://www.telegraph.co.uk/news/politics/10423013/BBC-faces-new-bias-row-over-charity-given-millions-by-EU.html>)

266 BBC, *The European Union — perceptions of the BBC’s reporting: management response: statement by the BBC Board of Governors*

267 Q 226

268 Q 229

253. Following this evidence session we asked the BBC a series of further questions in writing, on broadcasting decisions, complexity and explanation, the Wilson Report and Prebble Review and its Charter Obligations. These questions, and the BBC's replies, are published in full as evidence on our website. The BBC explained "a number of measures were implemented in response to the Wilson report. A Europe editor was appointed. New training resources were provided and all journalists were required to take a course on reporting Europe. Coverage of European issues is reviewed regularly at BBC News's Editorial Board. Coverage of European issues was widened to look beyond the Westminster prism and all output ensured a wide range of interviewees."²⁶⁹ In a further letter the Controller of BBC Parliament refuted any suggestion that the BBC thought Europe "too complicated" for its viewers, concluding "we do not think that Europe is either boring or too difficult."²⁷⁰

254. Given these comments we also followed during the course of our inquiry a separate "impartiality review of the breadth of opinion reflected in BBC output" launched by the BBC Trust in 2012. The review paid particular attention to coverage of immigration, religion and ethics and the UK's relationship to the EU and was conducted by former broadcasting executive Stuart Prebble. We were particularly interested that the BBC was returning to this issue, given the tone of the Wilson Report.

255. The Prebble review reported in July 2013. It concluded that:

What this adds up to is that with a complex subject in a complex world, as is the EU, the average viewer and listener is unlikely to find as much breadth of opinion as is available merely by watching and listening to the mainstream bulletins. Even the Today programme, with its three hours of discussion time available, cannot do justice to the full range of information and opinion which deserves an airing. However, if the viewer and listener is prepared to meet the BBC halfway—to do a bit of digging—only the very unreasonable would argue that the BBC is not providing a suitable breadth of views and opinion on the subject of Europe. It is there if you want to find it.²⁷¹

256. The BBC Trust generally welcomed the review's conclusions and noted "Stuart Prebble's description of a slowness in the past in accommodating opinion on immigration and the EU which politicians were uncomfortable in voicing."²⁷² It concluded that:

On Europe, the Trust notes that, in the snapshot of programmes it examined, the content analysis indicated the EU was more often treated as a problem in BBC content than otherwise and that this applied both to 2007 and to 2012. In both years much of the coverage could be characterised as relatively narrow and procedural and there was little substantive information about what the EU actually does and how much it actually costs. Interesting and informing the public on the UK and the European Union is a continuing challenge for the BBC. The Trust draws the

269 Ev w31

270 Ev w36 [Peter Knowles]

271 BBC, *A BBC Trust Review of the breadth of opinion reflected in the BBC's output*, July 2013, p 48

272 As above, p 2

Executive's attention to the audience research which suggested that audiences are aware they may have a referendum on the EU and expressed an interest in reliable economic views, and to the European Commission's submission to this review, which said the issue it thought needed be addressed most vigorously was ensuring journalists had the requisite knowledge and information. The Trust considers the EU is an area where it may be particularly valuable for the BBC Executive to consider Stuart Prebble's recommendation that finding new voices become a routine part of the job in relevant roles within the BBC ... and considers BBC management should feel encouraged in its efforts to develop a range of new voices and opinions.²⁷³

257. The Trust's response later builds on this final point, stating that "The Trust believes that deciding how much space to afford Westminster politicians is a particular challenge for BBC News" and invited the Director of News "to consider how BBC journalists can broaden both the range of people who comment on stories and the range of stories itself."²⁷⁴

258. Following publication of the Prebble Review, which was itself commissioned by the BBC Trust, we invited Lord Patten of Barnes, Chairman of the BBC Trust, to give oral evidence to us. He twice declined our invitation, following which we resolved unanimously that he "ought to appear" before us at the end of November. Just before we agreed this Report, Lord Patten wrote to us for a third time. He, again, refused to appear before us, stating:

I have consulted my colleagues on the BBC Trust and this letter reflects our collective and unanimous view. It is incumbent upon the Trust under the terms of the Royal Charter to stand up for the independence of the BBC and in particular its editorial independence. We are bound to weigh this as of paramount importance when viewed against a request to appear before your Committee which we believe to be inappropriate. Accordingly, I must decline your request.

As part of our role I and my colleagues appear quite properly in front of the Culture, Media and Sport Select Committee and the Public Accounts Committee, and neither attempts to engage with us – as you are proposing to do – on the editorial decisions of the BBC. Since becoming BBC Trust Chairman in May 2011, I myself have appeared before these two committees a total of six times. In this context I should add that, notwithstanding the implication of your letter, I have never sought to argue that my membership of the House of Lords should be a bar to appearing before Select Committees of the House of Commons.

We wonder if you have considered that the result of you asserting your right to call me before your committee on this issue is that BBC Trustees could in future be required to appear before any select committee to discuss the coverage of the BBC in its particular area of responsibility.

It is not therefore beyond the bounds of possibility to conceive that in quite short order we could be expected to answer to say the Home Affairs Committee on the

273 As before, pp 9–10

274 As before, p 11

BBC's coverage of that area, or the Foreign Affairs Committee on international stories. We can't believe that is what was intended when the Royal Charter was drafted and we do not believe that it is consistent with the ideal of an independent Trust protecting the BBC from undue political interference.

We would also point out that the BBC has already appeared in front of your Committee as part of this particular inquiry, with evidence provided by Ric Bailey, Mary Hockaday and Peter Knowles as senior Executives responsible for the areas under review. We have also made—and now repeat—an offer of a briefing from the BBC Trust on our responsibilities for editorial issues, including the handling of editorial complaints.²⁷⁵

259. We conclude that given the possibility of some form of EU referendum—either on membership or following treaty change—over the next ten years, the media, particularly (given its role) the BBC, needs to ask itself difficult questions about how it deals with EU issues. We are not convinced that the Prebble Review and the responses from the BBC Executive and BBC Trust have sufficiently asked, let alone answered, these questions. Some issues highlighted in the review (such as apathy, which is described in the Prebble review as “the main enemy”) are not, in our view, best addressed by measures such as the “cross-promotion of BBC services”; something more profound and strategic is necessary. We are disappointed, in this respect, that the section at the back of the BBC Trust’s response which lists the areas in which an update is required from the BBC’s Editorial Director in summer 2014 makes two specific references to religion and ethics but no specific mention of EU coverage. It is unacceptable that we have not had the opportunity to resolve these outstanding points because the Chairman of the BBC Trust, which commissioned the Prebble Report, has refused to appear before us for a public oral evidence session.

260. We reject the assertion in Lord Patten’s letter that our invitation to him to give oral evidence was “inappropriate”. We fully respect the editorial independence of the BBC. But that does not mean that the BBC Trust is above Parliament, and should pick and choose its interlocutors here.

261. The role of the BBC Trust, under the Charter, as it applied to this inquiry, was to be our focus in this session. We have already set out points on which we were seeking further evidence from the BBC Trust, particularly in the light of the Prebble Review (which was commissioned by the Trust). Supplementary written evidence from the BBC quoted Lord Patten as stating, with regard to the particular subjects to be covered by the Prebble review—religion, Europe and immigration—that “we’ve been criticised in those areas and we think it’s very important to listen to that criticism, not necessarily because it’s right but because it reflects real and interesting concerns.”

262. We publish our exchanges of letters with Lord Patten alongside this Report. We do not see why it is “inappropriate” to question—in public—a publicly-funded organisation on a review it has conducted, and what it will be doing to follow up that review. The BBC Trust’s defensiveness on this point is deeply disappointing and the broad-brush nature of the refusal will be of interest to all Select Committees. We

²⁷⁵ Ev w47. The references in para 259 are to p 12 and p 13 of the Prebble Review.

invite, as part of the follow-up to this inquiry, the BBC (including the Chairman of the BBC Trust), to give oral evidence in the spring of 2014, to set out what follow-up actions have been taken in the light of the Prebble Review, and to take forward the points raised in correspondence and in our supplementary questions, on such key matters as broadcasting decisions, complexity and explanation, the Prebble Review and Charter Obligations.

Reform of European Scrutiny Committee working practices

263. We set out below a series of measures we are taking to reform our working practices in the light of this inquiry, and also set out important areas of activity which we intend to continue and enhance. Some measures we have taken already, for example publishing meeting summaries. We are pleased to note that good feedback has been received from journalists and stakeholders to our initiatives so far, and we hope that this will translate into more and better reporting of European scrutiny in the House of Commons, and a better understanding of our work among the public.

Documents and reports

264. As well as reporting on individual documents, we will continue to conduct a limited number of more detailed inquiries into documents, groups of documents, or related issues, as permitted in our Standing Orders. We will continue to strike a balance between broad scrutiny and in-depth scrutiny, also taking into account the fact that we have no wish to duplicate the policy analysis conducted by Departmental Select Committees.

265. Several recommendations in this Report, particularly those relating to document deposit, could increase the workload associated with document scrutiny, and therefore mean that our existing staff team would need to be expanded. We will keep this under review.

Engagement with the European Parliament

266. Witnesses raised with us the importance of engaging with the European Parliament. Such engagement does already occur through the NPO and through regular tripartite meetings of this Committee with colleagues in the House of Lords and United Kingdom MEPs (indeed, the House of Commons is hosting the next such meeting in December 2013), as well as engagement at sectoral inter-parliamentary meetings and COSAC. The memorandum we received from the European Conservatives and Reformists Group in the European Parliament referred to such contacts as a way of upstreaming;²⁷⁶ Gisela Stuart MP commented that there is currently “a kind of dialogue where a major partner is missing”.²⁷⁷ The importance of engagement with MEPs was also emphasised by Chris Heaton-Harris MP and Richard Bacon MP,²⁷⁸ Sir Jon Cunliffe²⁷⁹ and the Rt Hon Sir Alan Beith MP.²⁸⁰

²⁷⁶ Ev w2

²⁷⁷ Q 245

²⁷⁸ Q 312

267. We have previously noted the importance we attach to upstream engagement, and we welcome greater engagement between Members of the European Parliament and MPs, including attendance at various events and meetings. However, it is also right to note — in the context of the discussions on democratic legitimacy — that there can be something of a tension between the roles of the two institutions, and the sensible approach is therefore to approach co-operation in a pragmatic and practical way, which is what we encourage our colleagues on Departmental Select Committees to do, particularly in relation to attendance at sectoral inter-parliamentary meetings.

The Committee's informal meetings

268. We will continue to take full advantage of the opportunities given to us to discuss scrutiny issues with colleagues in the House of Lords, across the UK and across Europe, at the meetings of the EC-UK forum (the Chairs of the European Affairs, or equivalent, Committees of the House of Commons and House of Lords, the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales), the tripartite (the Scrutiny Committees of the House of Commons and the House of Lords and UK MEPs) and COSAC.

Transparency

269. Meeting in public was mentioned by some witnesses as a way of increasing transparency, for example Chris Heaton-Harris MP.²⁸¹ We remain of the opinion that the experience of sitting in public to deliberate in 2008 was not a successful one, and we do not recommend that it be repeated. Quite simply we think it right to continue the normal select committee process of taking evidence in public and deliberating in private. However, there is much that can be done to communicate the Committee's work in a more effective way. The fact that the Committee publishes weekly reports on documents, putting its views on the record and in the public domain, already contributes to transparency and, indeed, Dr Auel rated the House of Commons system “quite highly, or very highly, on the transparency of its proceedings in the Committee and in European Committees.”²⁸²

270. **Since the beginning of the 2013–14 Session we have produced public meeting summaries, which are usually on our website the day of or the day after the meeting. These have been widely welcomed. We recognise that more could be done to develop our communications and our website—particularly by making it easier to navigate—and we will be taking this forward over the coming year. Until 2010 most Select Committees (including the European Scrutiny Committee) produced an Annual Report. This practice has now ceased, but it has become clear during the course of this inquiry that so many of the issues we consider recur over time that we should re-establish this practice with effect from the end of the 2013–14 Session.**

279 Q 421

280 Q 154

281 Q 307

282 Q 116

Pre-appointment hearings

271. One option we discussed with witnesses was the possibility of us holding a pre-appointment hearing with the next head of UKRep. Even if conducted on an informal basis, giving the opportunity to potential holders of this key post to explain the approach they intended to take would in our view enhance the scrutiny process. The then Head of UKRep, Sir Jon Cunliffe, told us that this was “a question for Parliament and for the Government, I work within the system that we have and I am sure Ministers would be happy to answer on that.”²⁸³

272. Professor Simon Hix noted that other Ambassadors’ posts were not subject to such hearings but took the view:

From the Foreign Office’s point of view, UKRep is like the Ambassador to Washington, the Ambassador to Moscow and the Ambassador to Beijing. Then there is the Ambassador in Brussels. It is all part of the moving of chairs. I think UKRep is qualitatively different, because UKRep is doing something different. UKRep is negotiating legislation. It is doing something fundamentally different. There is a reasonable argument to say that this is a different process. This is a person who is a representative of the British legislature in Brussels.²⁸⁴

273. The Minister’s response when we asked him the question was as follows:

It is certainly a very important role, but the Permanent Representative is an official who acts in line with policies that have been agreed by Ministers. In that sense, he is in the same position as the British Ambassador to Washington, Beijing or Berlin, or our Permanent Representative at the United Nations. No, the constitutional distinction that officials follow ministerial mandate, and it is Ministers who are accountable to Parliament for their officials, is the right one to maintain.²⁸⁵

274. He continued that:

I do not want to hold out any real hope, this morning, that the Government is likely to agree to the sort of pre-appointment hearing that you have in mind.²⁸⁶

275. Press reports appeared in early August 2013 that Ivan Rogers, then the Prime Minister’s Adviser on European and Global Issues, was shortly to be confirmed as the new Head of UKRep. In the light of this development, the Chairman wrote to the Prime Minister asking for the opportunity to hold an oral evidence hearing with the prospective holder of this important post. He confirmed that we would make our best efforts to make time available for such a hearing in the first or second sitting week in September.

276. We received a reply to our letter from the Foreign Secretary on 3 September. While he sought to assure us that he attached “the utmost importance to the accountability of the Civil Service, including UKRep”, he stated that he did “not agree that diplomatic posts

283 Q 406

284 Q 475

285 Q 534

286 Q 537

should be subject to pre-appointment hearings.”²⁸⁷ However, the reply did not directly address our point about the quasi-legislative nature of the post, so in further correspondence we asked the Foreign Secretary for a specific answer to this, who replied:

I agree this is certainly a very important role, but the Permanent Representative is an official who acts in line with policies that have been agreed by Ministers and does not have quasi-legislative powers. The UK Permanent Representative does not make rules and regulations, it is Ministers who agree proposals and legislation at a Council of Ministers. The constitutional distinction therefore that officials follow ministerial mandates, and it is Ministers who are accountable to Parliament for their officials, should be maintained.

277. We agree with the evidence of Professor Simon Hix that the legislative nature of the UKRep position makes it different in nature to other Ambassadorial appointments. While we note the position of the Government, we believe that prospective holders of this post should make themselves available to give oral evidence to Committees of this House. We deeply regret the fact that the Government did not permit this in the case of the new Head of UKRep, and will take this forward through the Liaison Committee.

9 Conclusion

278. We noted at the beginning of this Report that our influence must be focused on the UK Government. This is the key purpose of scrutiny; reflecting the primacy of the UK Parliament. As we pointed out in the introduction, the context of the Prime Minister's Bloomberg speech is highly relevant, in particular the 'fourth principle'—"It is national parliaments, which are, and will remain, the true source of real democratic legitimacy and accountability in the EU". The collective influence of national parliaments in the light of the Lisbon Treaty, for example through the Reasoned Opinion process, must also be considered to be part of the scrutiny process.

279. There are two reasons why a system of Parliamentary scrutiny of EU proposals was first established in 1972. First, by joining the EU the UK agreed to be legally bound by directly effective EU legislation; such legislation became automatically binding on UK citizens without the rigorous scrutiny which accompanies the enactment of a Bill. This was a very significant shift away from full Parliamentary scrutiny of legislation which is, in effect, the same as national legislation but without Acts of Parliament—and, because of Qualified Majority Voting, does not necessarily originate in Government policy. Secondly, if not directly effective, EU obligations were to be implemented by secondary legislation by virtue of section 2(2) of the European Communities Act 1972. Parliamentary scrutiny of secondary legislation implementing EU obligations is limited in scope—it cannot question the policy being implemented, but simply whether it has been done so correctly. Hence the pre-eminent importance of Parliamentary scrutiny of EU documents: it is the only means Parliament has of influencing EU policy before it becomes binding legislation. The reforms we recommend in this Report should be viewed in that light.

280. Our conclusions and recommendations are set out in full in the following section of this Report. They represent an agenda for radical reform of the scrutiny system. On the primacy question, we make a set of recommendations to improve the way in which debates are scheduled and conducted, but also conclude that there must be a strengthening of the scrutiny reserve to reflect the reality of decision-making in Coreper and by Qualified Majority Voting. We ask that more use is made of Supplementary Explanatory Memoranda to re-impose the scrutiny reserve when documents change during negotiations. More fundamentally, we see no reason why the idea of a national veto should not be urgently developed and decided, given the emerging discussions about collective 'red cards'.

281. The Modernisation Committee's 2005 Report on the scrutiny of European business was not debated by the House until three years after its publication, which was completely unacceptable. In the context of the current tone of debate at EU level, the moves towards deeper EU integration highlighted in successive Commission publications and the prospect of an EU in/out referendum in or before 2017 there is evidently an urgent need for the House and its Committees to address our conclusions and recommendations.

282. We ask the Government to ensure that it responds to our Report within the customary two-month deadline, and the Procedure Committee and the Liaison

Committee to consider those recommendations relevant to them, alongside the Government's response, so that this matter is brought to the floor of the House no later than Easter 2014.

Conclusions and recommendations

Introduction

1. The increase in the scope of Qualified Majority Voting—and the accompanying change in the nature and significance of the decision-making processes in the Council and Coreper (see paragraphs 80 and 81)—is highly significant for parliamentary scrutiny. In this context, it is clear that any EU scrutiny system is necessarily a hybrid of document-based and mandating processes. The challenge is to ensure that both aspects—that is, which documents are being scrutinised and the nature and effect of parliamentary influence—are both carefully considered. (Paragraph 34)
2. We believe that the House is very well served by the current level of UK representation in the National Parliament Office in Brussels. We see no reason, particularly at a time of budgetary restraint, substantially to increase the size of the NPO, though we note that in the lead-up to and during the UK Presidency of the EU in the second half of 2017 there may be a need for a modest increase in its staffing. (Paragraph 38)
3. In our view there is scope for increasing, and a need to increase, access by other Members of the House to the valuable material the NPO provides, particularly the Brussels Bulletin, and we will liaise with the NPO in order to take this forward. (Paragraph 39)

The role of the European Scrutiny Committee

4. Under Standing Order No. 143 (1)(c) we have the flexibility to report on why particular documents, or groups of documents, are politically important. Clearly these powers already amount to ‘sifting plus’. The workload created by a detailed consideration of the political merits of all the 1,000 documents a year which we scrutinise would risk overburdening the process—and would overlap with the work of Departmental Select Committees—but we see a need to build on our existing powers to make the scrutiny process as a whole more coherent and make a series of recommendations to achieve this. We will also in future define our assessment of legal and political importance as including in particular our assessment of its political and legal impact on the United Kingdom, continuing to draw on the impact assessments prepared both by the Government and by the Commission. (Paragraph 46)

Explanatory Memoranda

5. Explanatory Memoranda are the Government’s evidence to Parliament, and are signed off in each case by a Minister. We expect Ministers in all Departments to ensure that staff are supported and trained to produce high-quality EMs, and also to maintain strict systems of quality control and oversight, including by Departmental lawyers. (Paragraph 54)

Document deposit

6. We would be willing to consider further refinements to the deposit system and requests for particular classes of document to be subject routinely to non-deposit or a shorter EM, but in our view a subjective, document-by-document, real-time triage system would not be appropriate, particularly given the bicameral nature of deposit. We ask each Government Department to set out in the response to this Report specific categories of documents which it seeks to be either subject to non-deposit, or shorter EMs, so that we (and the House of Lords European Union Committee) can consider best how to balance the need to avoid strictly unnecessary work with our desire to maintain the rigour and the breadth of the scrutiny system. (Paragraph 61)

Non-papers and *limité* documents

7. We note the Minister's comments about non-papers and the offer of oral briefings. The number of documents on which we report (often more than twenty a week) means that oral briefings on individual items are rarely feasible. We therefore ask the Government to give us an undertaking that it will use Ministerial correspondence as a way of keeping us informed of the gist of non-papers. We also ask that whenever a non-paper is produced on a document which we have under scrutiny, that there be a presumption that the Government will at the very least provide a summary of its contents in the form of a letter. This could either be in a form which is publishable or made available to us on a confidential basis. We will keep the provision of such information, and the use which we can make of it, under review. (Paragraph 70)
8. We call on the Government to publish details of the day-to-day working arrangements of UKRep and Coreper, the precise way in which, and when, UKRep is given Ministerial instructions on specific matters, and an assessment (with examples) of the discretion given to UKRep officials to come to agreements relating to particular proposals. (Paragraph 82)
9. We were told that the UK Parliament is "among a few" national parliaments that do not have regular access to *limité* documents. We can ask to see such documents, and are supplied with them on an ad hoc basis, but we cannot ask to see documents if we do not know they exist. The current situation therefore leaves control of Parliament's access to these important legislative papers firmly in the grip of the Government. In our view this is wrong. We therefore recommend that the Government sends both Houses a weekly list of the *limité* documents which have been issued. We also recommend that the Government alerts the Committees whenever a *limité* document is produced on a document which is still under scrutiny, including a short summary of the *limité* text. Deposit is—and in our view should remain—a process which is inextricably linked with publication. It is now time to formalise separate mechanisms by which *limité* documents can be supplied to Parliament, which will assist our scrutiny of deposited documents. We will review how these mechanisms work once introduced, and in particular whether it should be possible in some way to hold *limité* documents under scrutiny. This links to arguments about the existence of this classification, which we cover below. (Paragraph 91)

10. We note that the UK Government intervened in the General Court proceedings to support the request for unredacted disclosure, and we urge the Government to press the EU institutions to cease using the *limité* classification, particularly to protect Member States' negotiating stances. We also ask the Government for its opinion on the implications of this case for the *limité* classification. (Paragraph 95)

Scrutiny of Council meetings

11. We conclude that the current process of Council decision-making and the role of Coreper and UKRep greatly obscures the position of individual Member States, and it is clear that Governments fall back on consensus if they know they are likely to be outvoted. This raises serious questions, given that some of the issues being decided would be the subject of an Act of Parliament if taken through domestic legislation. (Paragraph 99)
12. Turning to consideration of Council meetings in Committee, we see this as a final check as our scrutiny of proposals will have already been completed in the vast majority of cases (the CFSP being a particular exception). We therefore conclude that our current approach is appropriate. However, we believe that there is scope in some cases for Departmental Select Committees to become more involved at this point if there are matters of detailed policy remaining to be negotiated (including possibly holding a pre-Council hearing), and will work with the Liaison Committee to develop suitable mechanisms and guidance to improve practice in this area. Scrutiny of European Council meetings is dealt with later in the Report in the section on the floor of the House. (Paragraph 100)

Document deposit: overall conclusions

13. We propose changes to Standing Order No. 143 at the end of this chapter, building on a set of proposed Standing Orders and a scrutiny reserve resolution originally published in 2010 by our predecessor Committee. Overall, we conclude that we should retain our sifting role as it currently stands. (Paragraph 107)
14. We agree with the points made by our witnesses about the importance of seeking to influence the early gestative stages of the EU policy process, and note that this is a point at which the role of Departmental Select Committees can be highly significant. This is one of the reasons why we recommend enhanced scrutiny of the Commission Work Programme later in this Report, including the contemporaneous setting of priorities by Departmental Select Committees. (Paragraph 108)
15. For our part, we will continue to scrutinise Commission Green and White Papers, recommending them for debate/Opinion as appropriate. We will aim to recommend documents for debate at an earlier stage of the legislative process, if possible before the Council adopts a common position or general approach. For this to work we will need as much notice as possible, which must be facilitated both by the UK Government and the Council. We look to the latter in particular to fulfil the commitment made under Article 4 of Protocol (No. 1) to the EU Treaties, which states that an "eight-week period shall elapse between a draft legislative act being made available ... and the date on which it is placed on a provisional agenda for the

Council for its adoption or for adoption of a position under a legislative procedure”. We urge the Government to ensure that any information it receives about the timing of Council consideration is passed on to us as quickly as possible, and that debates on such documents take place in a timely fashion. We note that it may be necessary to act at speed, for example if we have reported on the Council’s approach just before the trilogues begin. Our consideration of the contents of non-papers will inform this. (Paragraph 109)

16. In view of Sir Jon Cunliffe’s statements that the Government “should aim to ensure that the Committee is updated on what we think will happen in the trilogue process” and “We will try to find ways to share information” we recommend that if there are substantive changes during trilogue negotiations the Government should provide Supplementary Explanatory Memoranda on documents which have cleared scrutiny (or deposit the new version of the document, with a new Explanatory Memorandum) automatically, rather than on request (thereby re-imposing the scrutiny reserve). The same should apply if there are material changes during negotiations within the Council, for example in the run up to a general approach or common position. (Paragraph 110)

Transposition

17. We recommend that all Statutory Instruments involving transposition of EU legislation should have a subsidiary “(E)” serial number (in a similar form to the existing subsidiary systems for commencement orders (C), the legal series relating to fees or procedures in Courts in England or Wales (L), or the Scottish, Northern Ireland and National Assembly for Wales series ((S), (NI) and (W) respectively)). They would therefore appear in the form S.I. 1998, No. 2357 (E. 12). (Paragraph 111)
18. We also recommend that all explanatory memoranda accompanying SIs contain a new section entitled *Does this statutory instrument implement or supplement an EU obligation?* Although it may be clear from the policy context whether an SI is implementing an EU obligation, we conclude that an unequivocal statement of this nature would be helpful for Members of Parliament and members of the public alike. (Paragraph 112)
19. Under the European Communities Act, the Government is free to make statutory instruments implementing most EU legislation through the negative resolution procedure, which requires no debate on, or positive approval of, the instrument in Parliament. The negative resolution procedure provides the House with minimal scrutiny of the transposition of EU legislation. A possibility that could be considered further is to oblige certain statutory instruments implementing an EU obligation to be approved through the affirmative resolution procedure, which requires a debate and resolution of approval in both Houses. To be effective, this would require a change to the Standing Orders of the JCSI and an amendment of the European Communities Act to define which transposing legislation would require affirmative resolution. (Paragraph 113)

Non-legislative Acts, CFSP and CSDP

20. In the absence of agreement with the Government to change our Standing Order as requested, we have relied on informal agreement with the Government about depositing non-legislative acts. This is not a satisfactory state of affairs, and so we propose amending Standing Order No. 143 to cover both legislative and non-legislative acts. Classes of non-legislative acts that are routine or trivial will be excluded from deposit by agreement with the Government. (Paragraph 118)
21. We conclude, for the reasons we have given, that Standing Order No. 143 needs to be amended to list European Council and Council Decisions under the CFSP as depositable documents. (Paragraph 121)
22. We do not recognise the distinction the Minister makes between “decisions” and “Decisions”, and note the Minister appeared to be unaware that all CFSP Decisions are non-legislative. We take the view that action plans, strategies and frameworks form an important part of the CFSP process and should be depositable; we have accordingly added them to the new version of our Standing Order, which is set out at the end of this chapter, to cover situations where they are adopted by Council Conclusions. (Paragraph 128)
23. We conclude that there is a real problem with current scrutiny of CFSP. First, there are a high number of ‘systemic’ overrides on measures relating to sanctions and asset-freezing which risk devaluing the scrutiny reserve. Second, the Standing Order is woefully out of date and in the absence of an agreed definition of ‘depositable document’ in this area we have had a series of ongoing disputes with the Government about particular categories of papers. It is important to address this because these are high profile and significant measures. (Paragraph 129)
24. Dr Huff suggested that Ministers giving evidence to the ESC or other Committees before Council meetings was “absolutely critical in making sure that Parliament has its voice heard in these sorts of discussions”. We recommend that not only should our Standing Orders be updated but also that we, the Foreign Affairs Committee and the Defence Committee should liaise to develop a more coherent system of CFSP and Common Security and Defence Policy (CSDP) scrutiny, including a pre-Foreign Affairs Council hearing, in order both to reduce unnecessary overrides and make the scrutiny process in this area more effective. In order to facilitate this we ask the Government to supply the three Committees with relevant *limité* draft Foreign Affairs Council Conclusions. (Paragraph 130)
25. Given the sheer number of documents in this category it is clear that depositing all delegated and implementing acts would swamp the scrutiny system. The existing ad hoc arrangements work reasonably well, but given the weaknesses identified by the Government we ask it to propose a coherent cross-Departmental approach for determining which implementing and delegated acts will be subject to deposit for the consideration of both this Committee and the European Union Committee in the House of Lords. (Paragraph 133)

The scrutiny reserve

26. We conclude that the reserve must remain the centre of gravity of the House of Commons scrutiny system. We therefore propose two major changes to reflect the reality of EU decision-making highlighted throughout this Report: first, that an override shall be regarded as having occurred when the Government abstains on a vote on a document held under scrutiny, not just when it votes in favour; and, second, that agreement or acquiescence by Government in reaching a consensus in Coreper on a document held under scrutiny, when the Government does not intend to object to the matter being raised as an A point in Council, should also trigger an override. (Paragraph 143)

Scrutiny of overrides

27. The general scrutiny reserve resolution does not cover a Government decision that the UK will participate in an EU justice and home affairs measure, where the UK has discretion over its participation under the EU Treaties. Such discretion exists either under the Title V opt-in or Schengen opt-out arrangements. Under the EU Treaties, a UK decision to participate in such an EU law is irreversible, and by their nature these laws typically concern sensitive matters. When Baroness Ashton, for the previous Government, made a statement on 9 June 2008 on improving Parliamentary scrutiny of these opt-in decisions, she said that these Government undertakings on better scrutiny should be reflected in an amended or new scrutiny reserve resolution. We therefore propose at the end of this Chapter an opt-in scrutiny reserve resolution to cover decisions taken in Whitehall to opt into or out of Title V or Schengen measures. (Paragraph 144)
28. Since our exchange of letters with the Cabinet Office the information we have received on scrutiny overrides has improved and we look forward to continued engagement with the Government with the aim of eliminating unnecessary overrides. To this end we will continue to scrutinise the override statistics closely. As a further measure to increase transparency we will from now on be placing the correspondence on overrides on a special section of our website. (Paragraph 145)
29. We will also continue to hold oral evidence sessions with Ministers in cases where there are serious breaches of the reserve (as took place in July 2013 with the then Minister for Public Health, Anna Soubry MP; in July 2012 with Crispin Blunt MP, then Parliamentary Under-Secretary at the Ministry of Justice; in February 2012 with Baroness Wilcox, then Parliamentary Under-Secretary at the Department for Business, Innovation and Skills; and in December 2011 with Chris Grayling MP, then Minister for Employment at the Department for Work and Pensions). For particularly serious breaches of the reserve, or repeated serious breaches, we will in future issue a Report censuring the Minister concerned, and if necessary recommend that this be debated on the floor of the House. (Paragraph 146)

Debates on EU documents on the floor of the House

30. We have reflected carefully on consideration of European Union business in the Chamber, as it is the most high-profile aspect of the House's scrutiny process. We

therefore propose a set of recommendations in order to make time on the floor of the House better-used, and to make Ministers more accountable for their decisions. (Paragraph 157)

31. Firstly, there is a strong case for adopting some of the procedures used for opt-in debates—namely a prior commitment by the Government to arrange a floor debate for measures which attract particularly strong Parliamentary interest (without prejudice to any recommendations we may make) across all types of EU business. The measures likely to be subject to these commitments could be announced by way of a Statement following consultation with this Committee, and could tie into the more systematic consideration of the Commission Work Programme we propose later in this Report. (Paragraph 158)
32. We propose that the Government should undertake to make time available in the House within four sitting weeks of a Committee recommendation for a floor debate (unless the Committee has for any reason waived this requirement or has recommended a more urgent timescale). (Paragraph 159)
33. We further recommend that the format of House debates should follow that of a European Committee—the debate should begin with a short explanatory speech by the Chairman or a nominated member of the ESC, before the Minister first makes a statement and responds to questions, and then moves the motion; the total length of such a debate would be no more than two and a half hours. (Paragraph 160)
34. In the case of a Reasoned Opinion we note that the Procedure Committee recommended in 2011 (with particular reference to European Committees) that: “It is evident that the present situation, in which a Minister must move a motion for a reasoned opinion whether or not the Government supports that motion, is confusing and misleading for Members and for the public. Since it is the European Scrutiny Committee which recommends that the House should consider a motion for a reasoned opinion, it would be logical for that motion to appear in the name of the Chair of the European Scrutiny Committee or in the name of another member of the Committee acting on its behalf. The difficulty at present is that Standing Order No. 119 refers, in paragraph 9, to a motion ‘of which a Minister shall have given notice’. We recommend that paragraph 9 of Standing Order No. 119 be amended by inserting, after ‘Minister’, ‘or, in the case of a motion for a reasoned opinion under Protocol (No. 2) to the Lisbon Treaty, a member of the European Scrutiny Committee’.” We fully agree with this recommendation, and take the view that it should apply, modified as necessary, to debates on Reasoned Opinions on the floor of the House. (Paragraph 162)
35. We also support the introduction of a procedure “for an appropriate number of MPs to table a motion challenging the [European Scrutiny] Committee’s decision [not to refer a document for debate] and force a vote on the floor of the House” originally made in a 2007 paper by the think-tank Politeia written by Theresa May MP. We note that the paper commented that “the procedure should be a last resort and be limited to serious issues that are in the national interest”. In our view the threshold for such a procedure should be reasonably high. Where such a motion is tabled, it

should impose the scrutiny reserve on the relevant EU document until the House has come to a resolution on the matter. (Paragraph 163)

A national veto and disapplication of EU law

36. We conclude that there should be a mechanism whereby the House of Commons can decide that a particular EU legislative proposal should not apply to the United Kingdom. The House's view could only be expressed prior to the adoption of the measure at EU level: but if such a motion was passed the UK Government would be expected to express opposition to the proposal in the strongest possible terms, including voting against it. (Paragraph 170)
37. We further conclude that parallel provision should be made to enable a decision of the House of Commons to disapply parts of the existing acquis. This, we acknowledge, would require an Act of Parliament to disapply the European Communities Act 1972 in relation to specific EU legislation. There have been several Private Members' Bills over recent years endorsing the principle of disapplication which have sought to achieve this, and amendments to the same effect were proposed in both Houses to the Legislative and Regulatory Reform Bill in 2006, which were whipped by the then official opposition. Such a development would be much more legally complex and controversial, but we were taken by the logic of the arguments of Professor Chalmers questioning the supremacy of EU law, and we look forward to the Government's detailed response to this proposal. (Paragraph 171)
38. More recently the Committee Chairman was granted an Urgent Question in the House on 19 November. We hold a related document—the Report on the Commission's 2012 Annual Report on the Charter on Fundamental Rights—under scrutiny. We have noted as part of the scrutiny process on that Report that to date the Government has expressed a very general view that the Charter only applies when the Member State is implementing EU law and also only to the extent that the rights under the Charter already apply as a matter of ECJ fundamental rights case law. But it has said little of detail on the impact of ECJ preliminary rulings on the Charter on UK law. Given these recent profound developments we will hold an oral evidence session with the Justice Secretary on the implications of this judgment. (Paragraph 177)
39. Our predecessor's suggestion for reinforcing the Protocol was not followed by the then Government. As a consequence, the Protocol appears to offer little safeguard from the application of the entirety of the Charter to the UK when applying EU law, as confirmed by the ECJ in the judgment above. This, we argue, is a direct consequence of Sections 2 and 3 of the European Communities Act 1972, shows some of the potential weaknesses of the European scrutiny system in the House of Commons and might be said to provide support for the suggestion that there should be a Parliamentary power to disapply EU legislation. (Paragraph 178)

European Council meetings

40. We recommend that there should be an opportunity for Members in the Chamber to air issues in advance relating to forthcoming European Council meetings, and rather

than a debate, we recommend that this should be timed to coincide with a session of Oral Questions on European Union matters (see later in this Report chapter). (Paragraph 180)

41. We will monitor the provision of Oral Statements following European Councils closely. While we note that the three European Councils since the Prime Minister's letter have been the subject of an oral statement by the Prime Minister, in two cases the statement also included another subject (on 3 June 2013, events in Woolwich; on 2 July 2013, Afghanistan). Given that the dates of the European Councils are known well in advance, we recommend that the dates of European Council oral statements should also be set well ahead and given to the House by means of a Written Ministerial Statement three times a year. The statement on the European Council should be self-standing. (Paragraph 182)

Oral questions on EU matters

42. Given the profound increase in the transfer of competences to the EU and the pressure for greater integration it is now time to give all Members of the House a regular opportunity to question Ministers specifically on European Union matters. We conclude that a session of oral questions (including a session of topical questions) to the Minister for Europe on EU matters, including other Ministers in a cross-cutting form, should be introduced, and that this should take place on the floor of the House, timed to coincide with the run-up to a European Council meeting. We note the comments by the Minister for Europe about the range of issues which could be covered, but see no reason why Ministers from other Departments could not accompany the Minister for Europe during these sessions. If necessary, the Questions for each session could be themed depending on the matters to be discussed at the European Council. (Paragraph 187)

Departmental Select Committees

43. We recognise that much of the strength of Departmental Select Committees comes from their autonomy and the independence they have to set their agenda. We are aware that our colleagues on Departmental Select Committees already have busy work programmes and it is also right to acknowledge that for some Committees EU matters may prove divisive. For all these reasons there appears to be no appetite for full mainstreaming of EU legislative scrutiny to Departmental Select Committees, but in our view the current situation is not sustainable. It is 15 years since our predecessor Committee wrote to the Modernisation Committee concluding that "There has been wide agreement that DSCs 'should do more about Europe', but in practice nothing much has happened." The fact that the debate still has a similar tone, given all that has happened in the EU over those 15 years, is disappointing. (Paragraph 204)
44. We have already concluded that we should retain our sifting, overarching remit: we provide a crucially-important mechanism for the House to focus on the most important proposals on the basis of a judgement made by elected politicians, with expert support. But it is clear to us that without broader analysis conducted across the Departmental Select Committee system the scrutiny process is incomplete. As

Dr Julie Smith put it “you need to find a way of making select committees feel there is a reason for looking at Europe”: the question is, how can this be done in a way which is effective, but also manageable at individual Departmental Select Committee level? We therefore seek to propose changes which introduce more coherence across the House, building on significant recent activity at official level, for example by the re-establishment of the network of Departmental Select Committee staff ‘contact points’ and regular meetings between these staff and those of the European Scrutiny Committee and the NPO. (Paragraph 205)

45. We recommend that the House, through the European Scrutiny Committee and Departmental Select Committees, produces a document along the lines of the Netherlands model. All Departmental Select Committees would be expected to set out which of the proposals in the Commission Work Programme they will aim to scrutinise, forming the basis for a debate which takes place in the House at the beginning of the Work Programme period. Should a Departmental Select Committee indicate to us that it saw a document as particularly worthy of debate, we would take account of that. We as a Committee would also continue to review the Work Programme. The Government would then use this information as a basis for making commitments to hold debates on particular documents, following discussions with this Committee (and without prejudice to our right to refer documents for debate). The Work Programme for the coming year is usually published in the autumn and comes into effect in January, so the timeframe for doing this would typically be November and December. We would publish a Report for debate on the floor of the House setting out our priorities and those of the Departmental Select Committees. (Paragraph 209)

Committee Reporters

46. We take the view that, Committee autonomy notwithstanding, it is clear that the existing approach to EU scrutiny within Departmental Select Committees needs improvement. We see engagement with the Work Programme as a way of setting priorities, and in order for this to work during the year it also requires ongoing engagement at Member level. We therefore recommend that the requirement to appoint a European Reporter on each Departmental Select Committee should be written into Standing Orders. This could be reviewed after the system has operated for two years. (Paragraph 216)
47. If this is agreed to, we note that a number of practical questions remain to be resolved through discussion in the Liaison Committee: How would Reporters be chosen by Departmental Select Committees? Could there be more than one per Committee? Would there need to be some kind of co-ordination across the House of which political party they were from? What resources, if any, would they need to do their job effectively? What precisely should their role be? Could Members seeking election for membership of Select Committees within their parties, for example, publicise that they would seek to take on this role? Should Reporters be required to sit on European Committees? (Paragraph 217)
48. We think that the combination of European Reporters, and a more systematic approach to the Commission Work Programme, could mark a significant shift in the

way the House as a whole approaches EU business. We hope that the Liaison Committee will take these recommendations forward. (Paragraph 218)

European Committees

49. We remain of the opinion that the best solution would be to revert to the previous system of permanent membership. Moreover, giving European Committees a permanent membership, with a permanent Chair, would enable them to make decisions about their business and timetabling, as well as developing expertise among their members and potentially making them more independent from the Whips. It would also give interest groups the opportunity to make their views known in advance to members of the relevant Committee. Given the impact of EU legislation on the voter, and the fact that many matters which come before European Committees would be the equivalent of an Act of Parliament—and have not necessarily originated from Government policy—we recommend that European Committees should not be whipped. (Paragraph 234)
50. The role of these Committees is questioning the Government about its negotiating approach on particular documents, and considering the wording of the motion to be considered on the floor of the House about the Government's position on those documents. We therefore recommend that they should be renamed as EU Document Debate Committees. (Paragraph 236)
51. Our new EU Document Debate Committees should also have permanent Chairs. We see considerable merit in these Chairs being elected, and possibly the Committee Members too. We also believe that Members of the House who are not members of the Committee should be permitted not just to attend and move amendments, but also—crucially—to vote. In this way the independence of the Committees would be guaranteed and it would enable all Members of the House to determine, not merely suggest, the form of the motion which goes to the floor of the House (on the assumption that the Government accepts our recommendation later in this chapter that it should commit to tabling in the House the motion agreed to by the Committee). (Paragraph 237)
52. We further recommend that EU Document Debate Committees should be given power to vary the way they conduct their business, for example: to dispense with the Ministerial statement, and proceed straight after the explanatory statement by the ESC Member to the debate on the Motion; to agree to reduce the length of the sitting of the Committee from two and a half hours to an hour and a half; to debate certain documents together; or to permit a member other than the Minister to move the motion (for example, in the case of a Reasoned Opinion, to allow this to be moved by a member of the European Scrutiny Committee). In order to do this the Committee would deliberate in public in exactly the same way as a Public Bill Committee considering a Programme Motion. (Paragraph 238)
53. We recommend that similar provisions on timing should apply to EU Document Debate Committees as we have recommended for debates on the floor of the House: that the Government should undertake to ensure that the debate takes place within four sitting weeks of a Committee recommendation (unless the Committee has for

any reason waived this requirement, or—indeed—has suggested a tighter timescale). (Paragraph 239)

54. Finally, we recommend that delegated legislation introduced under the European Communities Act which requires affirmative resolution (and would therefore normally fall to be considered by a Delegated Legislation Committee) should also be taken in the relevant EU Document Debate Committee. This would be one way of accommodating the recommendations from the Chair of the EFRA Committee about introducing amendable motions in Delegated Legislation Committees cited earlier in this Report. (Paragraph 240)
55. The then Deputy Leader of the House noted in 2008 that the then Government “recognise[d] the long running view expressed by previous Committees, including by the Modernisation Committee in 2005, that the motion tabled [in the House] should be the one agreed by the [European] Committee.” We recommend that the Government should set out a commitment that the motion tabled in the House should be the motion agreed by the EU Document Debate Committee. (Paragraph 243)
56. A particular issue has arisen with Reasoned Opinions, where there have been cases where a Minister has had to move a motion relating to a Reasoned Opinion proposed by the ESC, even when the Government did not agree with it. As we have already noted, the Procedure Committee reported in 2011 and recommended that in these cases the “motion [should] appear in the name of the Chair of the European Scrutiny Committee or in the name of another member of the Committee acting on its behalf.” The Government’s response rejected this. We ask the Government to reconsider its opposition to this change. (Paragraph 244)
57. We recommend that a new resolution of the House provide that any motion tabled following a debate in EU Document Debate Committee for consideration without debate on the floor of the House should appear in the European Business section of the Order Paper for at least one sitting day before it is put on the main Order Paper for decision, so that Members have the opportunity to consider whether or not to table amendments. (Paragraph 245)
58. It is noteworthy that on a number of recent occasions there has been confusion about the procedures involved in European Committee sessions. We therefore intend to work with the House authorities to produce further guidance on this process. (Paragraph 246)

The visibility of scrutiny and the media

59. We conclude that given the possibility of some form of EU referendum—either on membership or following treaty change—over the next ten years, the media, particularly (given its role) the BBC, needs to ask itself difficult questions about how it deals with EU issues. We are not convinced that the Prebble Review and the responses from the BBC Executive and BBC Trust have sufficiently asked, let alone answered, these questions. Some issues highlighted in the review (such as apathy, which is described in the Prebble review as “the main enemy”) are not, in our view,

best addressed by measures such as the “cross-promotion of BBC services”; something more profound and strategic is necessary. We are disappointed, in this respect, that the section at the back of the BBC Trust’s response which lists the areas in which an update is required from the BBC’s Editorial Director in summer 2014 makes two specific references to religion and ethics but no specific mention of EU coverage. It is unacceptable that we have not had the opportunity to resolve these outstanding points because the Chairman of the BBC Trust, which commissioned the Prebble Report, has refused to appear before us for a public oral evidence session. (Paragraph 259)

60. We reject the assertion in Lord Patten’s letter that our invitation to him to give oral evidence was “inappropriate”. We fully respect the editorial independence of the BBC. But that does not mean that the BBC Trust is above Parliament, and should pick and choose its interlocutors here. (Paragraph 260)
61. We publish our exchanges of letters with Lord Patten alongside this Report. We do not see why it is “inappropriate” to question—in public—a publicly-funded organisation on a review it has conducted, and what it will be doing to follow up that review. The BBC Trust’s defensiveness on this point is deeply disappointing and the broad-brush nature of the refusal will be of interest to all Select Committees. We invite, as part of the follow-up to this inquiry, the BBC (including the Chairman of the BBC Trust), to give oral evidence in the spring of 2014, to set out what follow-up actions have been taken in the light of the Prebble Review, and to take forward the points raised in correspondence and in our supplementary questions, on such key matters as broadcasting decisions, complexity and explanation, the Prebble Review and Charter Obligations. (Paragraph 262)
62. Since the beginning of the 2013–14 Session we have produced public meeting summaries, which are usually on our website the day of or the day after the meeting. These have been widely welcomed. We recognise that more could be done to develop our communications and our website—particularly by making it easier to navigate—and we will be taking this forward over the coming year. Until 2010 most Select Committees (including the European Scrutiny Committee) produced an Annual Report. This practice has now ceased, but it has become clear during the course of this inquiry that so many of the issues we consider recur over time that we should re-establish this practice with effect from the end of the 2013–14 Session. (Paragraph 270)
63. We agree with the evidence of Professor Simon Hix that the legislative nature of the UKRep position makes it different in nature to other Ambassadorial appointments. While we note the position of the Government, we believe that prospective holders of this post should make themselves available to give oral evidence to Committees of this House. We deeply regret the fact that the Government did not permit this in the case of the new Head of UKRep, and will take this forward through the Liaison Committee. (Paragraph 277)

Conclusion

64. We noted at the beginning of this Report that our influence must be focused on the UK Government. This is the key purpose of scrutiny; reflecting the primacy of the UK Parliament. As we pointed out in the introduction, the context of the Prime Minister's Bloomberg speech is highly relevant, in particular the 'fourth principle'—“It is national parliaments, which are, and will remain, the true source of real democratic legitimacy and accountability in the EU”. The collective influence of national parliaments in the light of the Lisbon Treaty, for example through the Reasoned Opinion process, must also be considered to be part of the scrutiny process. (Paragraph 278)
65. There are two reasons why a system of Parliamentary scrutiny of EU proposals was first established in 1972. First, by joining the EU the UK agreed to be legally bound by directly effective EU legislation; such legislation became automatically binding on UK citizens without the rigorous scrutiny which accompanies the enactment of a Bill. This was a very significant shift away from full Parliamentary scrutiny of legislation which is, in effect, the same as national legislation but without Acts of Parliament—and, because of Qualified Majority Voting, does not necessarily originate in Government policy. Secondly, if not directly effective, EU obligations were to be implemented by secondary legislation by virtue of section 2(2) of the European Communities Act 1972. Parliamentary scrutiny of secondary legislation implementing EU obligations is limited in scope—it cannot question the policy being implemented, but simply whether it has been done so correctly. Hence the pre-eminent importance of Parliamentary scrutiny of EU documents: it is the only means Parliament has of influencing EU policy before it becomes binding legislation. The reforms we recommend in this Report should be viewed in that light. (Paragraph 279)
66. Our conclusions and recommendations are set out in full in the following section of this Report. They represent an agenda for radical reform of the scrutiny system. On the primacy question, we make a set of recommendations to improve the way in which debates are scheduled and conducted, but also conclude that there must be a strengthening of the scrutiny reserve to reflect the reality of decision-making in Coreper and by Qualified Majority Voting. We ask that more use is made of Supplementary Explanatory Memoranda to re-impose the scrutiny reserve when documents change during negotiations. More fundamentally, we see no reason why the idea of a national veto should not be urgently developed and decided, given the emerging discussions about collective 'red cards'. (Paragraph 280)
67. The Modernisation Committee's 2005 Report on the scrutiny of European business was not debated by the House until three years after its publication, which was completely unacceptable. In the context of the current tone of debate at EU level, the moves towards deeper EU integration highlighted in successive Commission publications and the prospect of an EU in/out referendum in or before 2017 there is evidently an urgent need for the House and its Committees to address our conclusions and recommendations. (Paragraph 281)

68. We ask the Government to ensure that it responds to our Report within the customary two-month deadline, and the Procedure Committee and the Liaison Committee to consider those recommendations relevant to them, alongside the Government's response, so that this matter is brought to the floor of the House no later than Easter 2014. (Paragraph 282)

Annex 1: Glossary

Please note that there is a fuller guide to European Union institutions and legislation on the European Scrutiny Committee's website: www.parliament.uk/escom

Acquis

The *acquis* is the body of common rights and obligations which bind all the Member States together within the European Union. It comprises: the content, principles and political objectives of the Treaties; the legislation adopted in application of the treaties and the case law of the Court of Justice; the declarations and resolutions adopted by the Union; measures relating to the common foreign and security policy; measures relating to justice and home affairs; and international agreements concluded by the EU.

Applicant countries have to accept the *acquis* before they can join the EU. Derogations from the *acquis* are granted only in exceptional circumstances and are limited in scope. To integrate into the European Union, applicant countries have to transpose the *acquis* into their national legislation and implement it from the moment of their accession.

Codecision procedure/ordinary legislative procedure

Following the entry into force of the Treaty of Lisbon, the codecision procedure became the ordinary legislative procedure of the EU (Article 294 TFEU). This procedure gives the European Parliament the power to adopt instruments jointly with the Council of the European Union. It becomes co-legislator, on an equal footing with the Council, except in the cases provided for in the Treaties where the procedures regarding consultation and approval apply, known as the special legislative procedure. The ordinary legislative procedure entails qualified majority voting in the Council. The procedure comprises one, two or three readings, between the Council and the European Parliament (for further details please see paragraph 71).

Common Foreign and Security Policy (CFSP)

Under the Lisbon Treaty the CFSP now forms part of the larger framework of the EU's external action. The Lisbon Treaty reiterates the principles which govern the definition of this policy. It tasks the High Representative for Foreign Affairs and Security Policy with the mission to implement the strategies and decisions taken by the European Council and the Council in matters related to the CFSP. In carrying out her mandate, the High Representative is supported by the European External Action Service and the Political and Security Committee (PSC).

Common Security and Defence Policy (CSDP)

The European Union's European security and defence policy aims to allow the EU to develop its civilian and military capacities for crisis management and conflict prevention at international level.

The Maastricht Treaty (1992) was the first to include provisions on the EU's responsibilities in terms of security and the possibility of a future common defence policy. With the entry into force of the Treaty of Amsterdam (1999), new tasks were included in the Treaty on European Union (Title V), such as crisis management missions and peace-keeping missions. The Political and Security Committee, the EU Military Committee and EU Military Staff were established as the permanent political and military structures responsible for an autonomous, operational EU defence policy. In December 1999, the Helsinki European Council established the “global objective”, in other words that the Union must be able to deploy up to 60,000 persons within 60 days and for at least one year.

The Treaty of Lisbon reiterates that the Common Security and Defence Policy is an integral part of the Common Foreign and Security Policy. The ESDP becomes the “Common Security and Defence Policy” (CSDP) and could lead to a common defence if the European Council acting unanimously so decides (Article 42 TEU). Decisions relating to the CSDP are adopted unanimously by the Council.

The High Representative of the Union for Foreign Affairs and Security Policy is responsible for implementing the CSDP and for coordinating the civilian and military aspects of the “Petersberg” tasks (Article 43 TEU). Member States may be involved in carrying out these missions under the framework of permanent structured cooperation.

The Treaty of Lisbon also provides a “common defence clause”, which obliges Member States to assist a Member State which is the victim of armed aggression on its territory (Article 42(7) TEU).²⁸⁸

The Treaty of Lisbon also institutionalises the European Defence Agency created in July 2004 through a Council joint action. This Agency is responsible for: improving the defence capacities of the Union particularly in the field of crisis management; strengthening the Union's industrial and technological armament capacities; and promoting European cooperation in armament matters.

Coreper

The Permanent Representatives Committee or Coreper (Article 240 TFEU) is responsible for preparing the work of the Council of the European Union. It consists of representatives from Member States with the rank of ambassadors to the European Union and is chaired by the Member State which holds the Council Presidency. (For further details see paragraphs 79–82.)

Council of the EU

The Council of the European Union (“Council of Ministers” or “Council”) is the EU's main decision-making body for Member States. Its meetings are attended by Member State ministers, and it is thus the institution which represents the Member States. The Council's headquarters are in Brussels, but some of its meetings are held in Luxembourg. Sessions of the Council are convened by the Presidency, which sets the agenda.

²⁸⁸ A “solidarity clause” (Article 222 TFEU) allows all civilian and military means to be mobilised to assist a Member State which has been the victim of a terrorist attack or a natural or man-made disaster.

The Council meets in different configurations (ten in all), bringing together the competent Member State ministers: General Affairs; Foreign Affairs; Economic and Financial Affairs; Justice and Internal Affairs; Employment, Social Policy, Health and Consumer Affairs; Competitiveness; Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; Education, Youth and Culture. The “General Affairs” Council is responsible for coordinating the work of the different Council formations, with the Commission’s assistance.

Decisions are prepared by Coreper, assisted by working groups of national government officials.

The Council, together with the European Parliament, acts in a legislative and budgetary capacity. It is also the lead institution for decision-making on CFSP, and on the coordination of economic policies (intergovernmental approach).

Court of Justice of the EU

The Court of Justice of the European Union (CJEU), created in 1952 by the Treaty establishing the European Coal and Steel Community, comprises the Court of Justice, the General Court and specialised courts. It ensures compliance with EU law in the interpretation and application of the Treaties. The Court of Justice comprises one judge per Member State and eight Advocates-General. The number of Advocates-General may be increased by the Council at the request of the CJEU.

The two main functions of the CJEU are to:

- check whether acts of the European institutions and of governments are compatible with the Treaties (infringement proceedings, proceedings for failure to act, actions for annulment);
- give preliminary rulings, at the request of a national court, on the interpretation of EU law.

The Court may sit in chambers, in a Grand Chamber or as a full Court. The Advocates-General assist the Court of Justice. Their duty is to present with complete impartiality and independence a legal opinion on cases referred to them. The Registrar is the Secretary-General of the institution and manages the services of that institution under the authority of the President of the Court.

Delegating and Implementing Acts

Before the entry into force of the Lisbon Treaty, the Commission’s implementation of EU legislation was overseen by committees of Member State experts through the so-called “comitology” system. This system has now been abolished (although it will continue to apply to unamended acts adopted before the Lisbon Treaty), and the Treaty instead distinguishes between delegated acts and implementing acts (Articles 290 and 291 TFEU). A delegated act is defined as a general measure to supplement or amend non-essential elements of legislation, whereas an implementing act is characterised by its essential nature: the need for uniform conditions for implementation. There is no formal role for Member State expert committees for the delegated acts procedure, although the Commission

continues to consult these on an informal basis. For implementing acts, the system is similar to the old comitology procedure, with formal committees of national experts.

The European Parliament and the Council have the power to veto or revoke proposed delegated acts (the Council acting on the basis of qualified majority voting under Article 290(2) TFEU). Agreement between the Parliament and the Council in this regard is not required; an objection from either would prevent the adoption of the delegated act. Under implementing acts, the Member States can block a proposal through the Appeal Committee comprising deputy Permanent Representatives (convened if agreement cannot be reached among the committee of national experts), but only if a qualified majority is opposed. If there is no qualified majority, the Commission decides unilaterally whether to adopt the implementing act.

European Commission

Established by the Treaty of Rome in 1957, the European Commission proposes policies to be adopted by the Council and the European Parliament, and monitors implementation. It possesses the exclusive right of initiative in almost all areas of EU policy.

The Commission is appointed for a five-year term by the Council acting by qualified majority in agreement with the Member States. It is subject to a vote of appointment by the European Parliament, to which it is answerable. The Commissioners are assisted by an administration made up of Directorates-General and specialised departments whose staff are divided mainly between Brussels and Luxembourg.

European Council

With the entry into force of the Treaty of Lisbon, the European Council became one of the European Union institutions. Comprising the Heads of State or Government of the Member States, it meets at least four times a year and includes the President of the European Commission as a full member (but not a voting member). It elects its President for a period of two and a half years.

The role of the European Council is to provide the European Union “with the necessary impetus for its development” and to define its general political direction (Article 15 TEU). It does not exercise any legislative function. However, the Treaty of Lisbon provides the option for the European Council to be consulted on criminal matters (Articles 82 and 83 TFEU) or on social security matters (Article 48 TFEU) in cases where a State opposes a legislative proposal in these areas.

European External Action Service

The High Representative of the Union for Foreign Affairs and Security Policy is assisted by a European External Action Service tasked with the coordination of the Union’s external actions, preparing action proposals or positions and implementing them after Council approval. They also provide support to the President of the European Council, the President of the Council and to the members of the Commission on all areas of external relations.

The European External Action Service comprises officials from relevant departments of the General Secretariat of the Council, the European Commission and diplomatic services of the Member States.

Existing EU delegations and crisis management structures within the General Secretariat of the Council, such as the Crisis Management and Planning Directorate, the Civilian Planning and Conduct Capability and the European Union Military Staff, also form part of the European External Action Service.

European Parliament

The European Parliament's main functions are as follows:

- legislative power: in most cases Parliament shares legislative power with the Council through the ordinary legislative procedure;
- budgetary power: Parliament shares budgetary powers with the Council in voting on the annual budget, rendering it enforceable through the President of the Parliament's signature, and overseeing its implementation; and
- power of control over the EU's institutions, in particular the Commission. Parliament can give or withhold approval for the designation of Commissioners and has the power to dismiss the Commission as a body by passing a motion of censure. It also exercises a power of control over the EU's activities through the written and oral questions it can put to the Commission and the Council. It can also set up temporary committees and committees of inquiry whose remit is not necessarily confined to the activities of European institutions but can extend to action taken by the Member States in implementing European policies.

Explanatory Memorandum

An Explanatory Memorandum (EM) is the Government's written evidence to Parliament which summarises the content of a proposal for EU legislation or other important EU document. It contains information about the aims of the proposal and the Government's attitude towards it.

Green Paper

Green Papers are documents published by the European Commission to stimulate discussion on given topics at European level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green Papers may give rise to legislative developments that are then outlined in White Papers.

High Representative of the Union for Foreign Affairs and Security Policy

The Amsterdam Treaty created the post of the High Representative for the Common Foreign and Security Policy, the first holder of which was Javier Solana, Secretary General

of the Council. The Lisbon Treaty maintains the function of the High Representative for Foreign Affairs and Security Policy, but extends his/her responsibilities by incorporating the functions of Council Presidency in matters of foreign affairs, and of the Commissioner responsible for External Relations. The current postholder is Baroness Ashton.

The High Representative is one of the eight Vice-Presidents of the European Commission and presides over the Foreign Affairs Council. They participate in the development of the Common Foreign and Security Policy and implement it as mandated by the Council. They are responsible for external relations and the coordination of other aspects of the Union's external action. They are also responsible for the Common Security and Defence Policy.

The High Representative is appointed by the European Council by a qualified majority, with the approval of the President of the Commission, for a mandate of five years. The European Council may end this mandate following the same procedure. The High Representative must tender his/her resignation if the President of the European Commission requests it.

In carrying out their missions, the High Representative is supported by the European External Action Service.

Presidency of the Council of the EU

The Presidency of the Council of the EU is responsible for the functioning of the Council, including chairing Council meetings, determining the agenda of meetings and representing the Council at meetings with other EU institutions.

The Lisbon Treaty provides that the Presidency of the Council in its different forms be carried out by groups of three Member States. The composition of these groups is determined by equal rotation of the Member States. Each member of the group holds the Presidency for a period of six months.

The Presidency of the Council of Foreign Affairs is held by the High Representative of the Union for Foreign Affairs and Security Policy who also represents the Union in issues relating to the CFSP.

Qualified Majority

A qualified majority is the number of votes required in the Council for a decision to be adopted when issues are being debated on the basis of Article 16 TEU and Article 238 of the TFEU. Under the ordinary legislative procedure, the Council acts by qualified majority, in codecision with the European Parliament.

The Treaty of Nice introduced a qualified majority system based on a new weighting of votes and a “demographic verification” clause. The number of votes allocated to each Member State was re-weighted, in particular for those States with larger populations. After 1 January 2007 and following enlargement of the EU, the qualified majority increased to 255 votes out of a total of 345, representing a majority of the Member States. Moreover, a Member State may request verification that the qualified majority represents at least 62% of the total population of the EU. If this is not the case, the decision is not adopted.

With the entry into force of the Treaty of Lisbon a new system known as “double majority” was introduced. It will enter into force on 1 November 2014. The Nice system shall remain applicable during the transition period up to 31 October 2014. In accordance with the Treaty, the new qualified majority corresponds to at least 55% of the members of the Council, comprising at least 15 of them and representing at least 65% of the European population. A blocking minority may be formed comprising at least four members of the Council.

As the various institutional reforms have taken effect, qualified majority voting has largely replaced unanimous voting. The Treaty of Lisbon extended the qualified majority to issues which were previously governed by unanimity, such as external border control, asylum, and the negotiation of international agreements on trade matters.

Subsidiarity

The principle of subsidiarity is defined in Article 5 of the Treaty on European Union. It provides that decisions should be taken as closely as possible to the citizen. Specifically, it is the principle whereby the EU does not take action (except in the areas that fall within its exclusive competence), unless it is more effective than action taken at national, regional or local level.

The Edinburgh European Council of December 1992 issued a declaration on the principle of subsidiarity that laid down the rules for its application. The Treaty of Amsterdam took up the approach that followed from this declaration in a Protocol on the application of the principles of subsidiarity and proportionality. Following the entry into force of the Treaty of Lisbon on 1 December 2009, a new Protocol requires the principle of subsidiarity to be respected in all draft legislative acts and allows national parliaments to object to a proposal on the grounds that it breaches the principle. If a sufficient number of Member States object (either a quarter or a third) the proposal may be maintained, amended or withdrawn by the Commission, or blocked by the European Parliament or the Council. In the case of a breach of the principle of subsidiarity, the Committee of the Regions may also refer the legislative act directly to the Court of Justice of the European Union (if it was consulted on it during the legislative process), and national parliaments can refer the legislative act to the Court of Justice acting through their Member States.

White Paper

Commission White Papers are documents containing proposals for Union action in a specific area. In some cases they follow a Green Paper published to launch a consultation process at European level. When a White Paper is favourably received by the Council, it can lead to an action programme for the Union in the area concerned.

Glossary adapted from the www.europa.eu website.

Annex 2

Member State	Role of competent committee(s) in EU scrutiny	Scrutiny reserve?	Transparency: Availability of committee documents/Meetings in public or private
Austria	<p>National Council: Main Committee on European Affairs considers position of the Government prior to meeting of the European Council. Decides on mandates on behalf of parliament. Can issue communications in the framework of the political dialogue. The Permanent Subcommittee on European Affairs can issue reasoned opinions regarding the principle of subsidiarity as well as mandates for the member of government responsible for the dossier. Can issue communications in the framework of the political dialogue.</p> <p>Federal Council: EU-Committee can issue reasoned opinions regarding the principle of subsidiarity as well as mandates for the member of government responsible for the dossier. Can issue communications in the framework of the political dialogue.</p> <p>On 1 January 2012 the "EU Information Law" entered into force, which complements the existing obligation of the Austrian Government to inform the Parliament on EU matters. It has simplified access to EU documents by making the Council's extranet available to the Austrian Parliament, enhancing parliamentary scrutiny by establishing or formalising measures such as asking the Government to give "information on future EU projects" on a half-yearly basis.</p> <p>For further information see Participation Rights of the Austrian Parliament, Austrian Parliament website.</p>		Open meetings except when decided otherwise/discussing confidential material.
Belgium	Joint Federal Advisory Committee on European Affairs is Council oriented (House and Senate): meets with the Prime Minister in order to consider position of the government prior to each meeting of the European Council. In general, a debriefing with the Prime Minister follows the European Council meeting. The Committee also deals with the other aspects of the European decision making process (Commission	No	Public access to meetings generally, and documents released into public domain.

	<p>work programme, EU presidencies, transposition of EU legislation.). It can also appoint rapporteurs on any European issue and adopt resolutions sent to the plenary.</p> <p>Commission oriented (secretariat of the committee): (House) makes a preliminary review of all the proposals of European acts and other documents and determines what should be referred to the sectoral committees for further scrutiny. Prepares a note on the documents selected, which deals inter alia with compliance with the principles of subsidiarity and proportionality. The sectoral committees can adopt an opinion which is printed as a parliamentary document and sent to the European Commission and the European Parliament.</p> <p>(Senate): follows the same procedure as the House, but the preparatory note is made by the EU Affairs Unit. Before sending an opinion to the European Commission, it must be confirmed by the plenary of the Senate.</p> <p>(Regional assemblies): following the constitutional division of competencies in Belgium, the regional assemblies can adopt reasoned opinions concerning compliance with subsidiarity and proportionality. Via a cooperation agreement between the Belgian legislative assemblies, these opinions are “translated” into the two votes Belgium holds.</p>		
Bulgaria	<p>Committee on European Affairs and Oversight of the European Funds — Basis of scrutiny is the annual working programme of the National Assembly on EU issues. Sectoral committees debate proposals and submit a report to the Committee. These reports are taken into account for the Committee’s final report to the National Assembly. When a draft EU Act relates to foreign policy issues, the Committee holds a joint sitting with the Foreign Policy and Defence Committee.</p> <p><i>For detail, see Bulgarian Parliament Rules of Procedure.</i></p>	Yes	Meetings are generally open to public.
Croatia	<p>The European Affairs Committee is the central point for scrutiny and subsidiarity checks. Scrutiny is based on the Work Programme that the European Affairs Committee composes annually and contains draft European acts that are to be scrutinised. Specialised parliamentary Committees are involved in the scrutiny from the beginning of the process, as they may propose draft acts from their remit to be included in the Work Programme. Once the draft act in question, along with the corresponding Position of the Republic of Croatia is delivered to the Croatian Parliament, specialised committees may debate them and send their opinions to the European Affairs Committee. The latter, taking into consideration opinion(s) of specialised committees, then draws a Conclusion on the Position of the Republic of</p>	No	Committee sessions opened to public unless decided otherwise by the committee in question.

	<p>Croatia based on which the Government acts in the European institutions.</p> <p>Subsidiarity checks are conducted in the European Affairs Committee but the process may be initiated by each Member of Parliament, parliamentary committee, parliamentary party group or the Government.</p>		
Cyprus	<p>Scrutiny of EU documents in the Cyprus Parliament: Documents/legislative proposals sent by the EU institutions to the House are forwarded to the Standing Parliamentary Committee on Foreign and European Affairs and/or the competent sectoral Committee(s) depending on the subject matter. The said Committees may also invite a Minister/member of the executive to inform the Parliament on the position to be taken by the Government regarding any issue examined or to be examined at the EU level (Council of Ministers, European Council). Due to the clear separation of powers provided under the Cyprus Constitution, the Parliament cannot mandate the Government on any issue, but it may exert political pressure through the parliamentary control exercised over the actions of the executive, at both national and EU level.</p> <p>Following the completion of the examination of the proposal at hand: (a) if the Committee on Foreign and European Affairs has conducted a subsidiarity check on the proposal a Report is compiled on whether the subsidiarity principle has been breached. If a reasoned opinion is adopted, it is forwarded to the President of the House of Representatives who signs a cover letter and sends the reasoned opinion to the EU institutions; (b) In cases where the Committee on Foreign and European Affairs and/or the competent sectoral Committee has examined only the substance of the matter at hand: if it is deemed necessary, an opinion is sent to the EU institutions in the framework of the political dialogue. Where the Parliament has important information to exchange, the outcome of the examination of the proposal is posted on IPEX. The Committee may re-examine the issue at a later stage.</p> <p>Under the practice followed until now, only the Parliamentary Committee on Foreign and European Affairs conducts subsidiarity checks on EU legislative proposals.</p>	No	Limited meetings in public.
Czech Republic	<p>Committee for European Affairs (Chamber of Deputies) — Deliberates on draft EU legislation and may relay such drafts accompanied by its opinion to other competent committees or to the plenary session. The Committee may request the relevant Government Minister to attend prior to the Council meeting; the Minister shall provide Members of Parliament with information on the position that the Czech Republic will adopt on the matter being deliberated in the Council. Opinions are not binding for the Government, although the Government must take them into account.</p>	Yes	Meetings are generally open to public, but may be private in certain circumstances.

	<p>Committee for European Union Affairs (Senate) — The Committee deals with all EU policies regulated by the Treaty on the Functioning of the EU. The area of common foreign and security policy falls within the competence of the Committee on Foreign Affairs, Defence and Security. Both Committees may ask specialized Committees to deliver their opinion. The Government is obliged to take the Senate's position into account and reports regularly on that.</p> <p><i>For detailed information on the procedure, see the Chamber of Deputies Rules of Procedure.</i></p>		
Denmark	<p>European Affairs Committee — Ministers present all EU matters which the Government regards as being of considerable importance or of major significance. The EAC mandates the Government before it votes in the Council of Ministers, sometimes earlier (for various Committees) following developments in the EU decision making process. Has a system for subsidiarity check and new rules and procedures for involving the Danish standing committees. Also regular co-operation/meetings with Danish MEPs.</p> <p>Danish parliamentary scrutiny of the EU has long been held to be highly effective, largely because the Folketing mandates the Government with regard to its action in the Council.²⁸⁹ Daniel Finke and Marius Melzer²⁹⁰ published a report called "Parliamentary Scrutiny of EU Law Proposals in Denmark: Why do Governments request a Negotiation Mandate?" February 2012.</p>	Yes	Meetings held in public, unless otherwise decided. Meetings are televised on the Danish Parliament's TV channel as well as webstreamed.
Estonia	European Union Affairs Committee — Government must present negotiating position to committee. Responsible for mandating government on basis of opinions of the specialised committees. The system is essentially document-based and operates through sectoral committees.	Yes	No public meetings, but minutes are published.
Finland	Constitution requires Government to keep Parliament informed on the preparation of EU matters. The Government must hear Parliament's views on EU initiatives and must explain and justify its policies. The Government's duty to submit EU matters to Parliament is limited to proposals whose effect is equivalent to a domestic Act of Parliament, and items specifically requested by Parliament. The Grand Committee (EU affairs Committee) takes the final position of the Parliament usually in line with the	Yes (Finland never uses Parliamentary reserve since Parliamentary scrutiny is part of formulating the	No public meetings. Documents become public after committee meeting.

289 See Consideration of EU matters in the Folketing — a summary, 2005.

290 Institute for Advanced Studies (IHS), Vienna

	<p>opinions from the sectoral committee(s). All sectoral Committees deal with EU matters. Legislative proposals and other EU initiatives are forwarded to the appropriate sectoral committee(s) for scrutiny and opinion. Before each Council/European Council, the Ministers/PM informs the Grand Committee of the agenda, Finnish position and state of play of the negotiations. CFSP and CSDP matters are scrutinized by the Foreign Affairs Committee. Government adopts Parliament's position on all proposed EU acts. Ministers/PM always report to the Grand Committee after each Council meeting on decisions. Document-based scrutiny and hearings with Ministers are two separate but inter-related cycles: scrutiny completed before Council working groups begin; Ministers heard before Council meetings.</p> <p>Ministers are politically accountable to the Parliament. If a Minister has had to deviate from the agreed position, the Minister must give an explanation to the Grand Committee without delay.</p> <p>"The fact that every committee of the Parliament has been involved in EU matters has ensured the necessary expertise in all fields of European action and has associated all Members of the Parliament with European policy-making". See Parliamentary Scrutiny of European Union Matters in Finland.</p>	Finnish position)	
France	<p>Committee on European Union (Assemblée Nationale) — The European Affairs Committee (EAC) of the National Assembly considers all draft European acts. It takes note of texts deemed to be of minor importance or that do not give rise to any difficulty. Texts which justify Parliament taking a position are the subject of a written or an oral presentation by the Chairman of the Committee or by a specially appointed rapporteur.</p> <p>The EAC can adopt conclusions in support or opposition of any European proposal or, when justified by the importance of the topic, table a motion for a resolution. Any deputy in the National Assembly can table a motion for a resolution on any European topic. These motions are then considered by the European Affairs Committee, which can reject or adopt them after possibly amending them. Motions are then sent to a lead committee among the eight standing committees, which can adopt them (either explicitly or tacitly within one month). Lastly, the Conference of Presidents decides whether it is necessary to include the motion for debate on the plenary agenda. If it does not do so within a fortnight, the resolution is considered as final and transmitted to the Government. While these resolutions do not legally bind the Government, they have a strong political impact.</p>	Yes – 8 weeks for draft legislative acts, 4 weeks for any other document	<p>Meetings are generally closed (for practical reasons) but the EAC may decide to open some of its hearings. Meetings with exceptional guests and Joint meetings with members of the EAC of the National Assembly and French MEPs are public.</p> <p>Minutes and documents of all meetings are made public</p>

	<p>The procedure for adopting a reasoned opinion on the grounds of non-compliance of subsidiarity is the same as the procedure for adopting resolutions, but with shorter time limits in order to complete the process within the 8-week timeframe.</p> <p>Committee on European Union (Sénat) – The European Affairs Committee (EAC) (36 members, each of them belong at the same time to one of the seven standing committees) has the duty to monitor EU activities. Its main task is to systematically review EU texts before they are adopted by the EU institutions. It may adopt draft resolutions on EU proposals or documents, in order to give the Senate's point of view to the Government. The procedure for adopting EU resolutions is fairly similar to the one in the National Assembly.</p> <p>The Committee also assesses the compliance with the principle of subsidiarity of every legislative proposal sent by the European Commission in the framework of protocol 2 to the treaty of Lisbon. It is entitled in this regard to adopt draft reasoned opinions. The procedure follows : a dedicated working group, where political groups are equally represented, reviews the draft proposals and suggests, if deemed necessary, a rapporteur for a more complete examination. Then, the rapporteur presents the subsidiarity and proportionality issues to the EAC which decides if the text complies with these principles. 16 reasoned opinions have been adopted since the Lisbon treaty is in force (7 in 2012).</p> <p>Moreover, during a public session (in plenary), a debate is set up with the relevant member of the Government before each formal meeting of the European Council.</p>		
Germany	<p>Committee on questions of the European Union (Bundesrat) — The Committee is the lead committee on all documents from the Council and the Commission that are of importance for the federal states. It generally discusses the documents on the basis of recommendations from the sectoral committees. The Committee suggests recommendations for opinions to be adopted by the plenary. It also examines whether there is sufficient legal basis in the EU Treaties for the draft legislation and checks that the principles of subsidiarity and proportionality are respected. The Federal Government is obliged to consider the opinions of the Bundesrat. In some cases, they are even binding for the Federal Government.</p> <p><i>For further information on the different forms of parliamentary participation of the Bundesrat in European matters, please see the European information web-site of the Bundesrat. For detailed information on the procedure, please see the Rules of</i></p>	See second column	See second column

	<p><i>procedure of the Bundesrat.</i></p> <p>Role of competent committees in EU scrutiny</p> <p>All parliamentary committees of the Bundestag scrutinize EU matters that fall within their competence. EU items are referred to one lead committee – depending on the subject matter – and usually several other committees. The Committee on the Affairs of the European Union (EU Committee) is usually involved, but not necessarily as lead committee. In their deliberations on EU documents, the committees also monitor adherence to the principles of subsidiarity and proportionality and may present a recommendation for a resolution to the Bundestag. The EU Committee can express concerns regarding infringement of these principles even if it is not the lead committee. It then presents a recommendation for a resolution to the Bundestag. The Bundestag may empower the EU Committee to exercise the rights of the Bundestag in relation to the Federal Government (in accordance with Article 23 of the Basic Law). The EU Committee has no power to adopt opinions that are binding on the Federal Government if there has not been a specific empowerment by the Bundestag. The Federal Government is obliged to notify the Bundestag comprehensively, as early as possible and continuously of matters concerning the EU. This covers, in particular, the Federal Government's decision-making process, the preparation and course of discussions within the institutions of the EU. This is regulated by the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union, which has been amended on 4 July 2013 http://www.bundestag.de/htdocs_e/bundestag/europe/ipex/EUZBBG_Juli_2013_EN.pdf</p> <p>Scrutiny reserve?</p> <p>See Article 23 (1) of the German Fundamental Law: "Before participating in legislative acts of the European Union, the Federal Government shall provide the Bundestag with an opportunity to state its position. The Federal Government shall take the position of the Bundestag into account during the negotiations. Details shall be regulated by a law."</p> <p>Details are regulated by section 8 of the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (see above).</p> <p>See also: Act on the Exercise by the Bundestag and by the Bundesrat of their Responsibility for Integration in Matters concerning the European Union (Responsibility for Integration Act) (https://www.bundestag.de/htdocs_e/bundestag/committees/a21/legalbasis/intvg.html)</p>		
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	Transparency: Availability of committee documents / Meetings in public or private Committee documents are mostly not published with the exception of documents for and minutes of public hearings. Most meetings are held in public.		
Greece	Special Standing Committee on European Affairs — Adopts recommendations on EU legislation and submits them to Parliament and Government. Expresses advisory opinion on any EU issue, opinion not binding, although Government must answer opinion. <i>For detailed information on the scrutiny procedure, see Hellenic Parliament (Vouli Ton Ellinon) Special Standing Committee for European Affairs.</i>	No	Public meetings, agendas on website, minutes only available on request.
Hungary	New legal framework since April 2012: The Act XXXVI of 2012 of the National Assembly replaced the previous Act determining the controlling possibilities of the parliament in EU affairs. The new Act also defines the detailed rules of cooperation with the Government in order to efficiently represent the Hungarian interests in the Council. Regarding scrutiny the Committee on European Affairs (CEA) has a central role including the phases of preparation, decision making and control. The aim of the CEA is to oversee and influence the Hungarian negotiating position. The parliamentary standpoint politically binds the Government at Council meetings. The system of scrutiny created in Hungary is a relatively strong one. The Government has a wide-range of obligation to provide the Committee with EU drafts. The CEA decides which EU draft will be taken under examination and it also seeks to assist and coordinate the work of the standing committees involved in scrutiny. The most important characteristic of the process is that the CEA has a decision-making power, and takes decisions in the name of the plenary.	No	The meetings focusing on general debate of EU drafts and the HU position is open to the public. However the standpoint of the CEA is elaborated in an in camera session.
Ireland	Ireland changed to a new "mainstreaming" system in 2011 whereby each Committee now considers the draft legislative acts and other documents relevant to its policy area and receives Ministers before Council for oral briefings. A further refinement in 2012 is that each Committee selects the proposals it will scrutinise in detail based on the Commission Annual Work Programme and other sources of information. Proposals which are not prioritised still come before the Committee on a schedule but will not be examined in detail unless there is a further reason to do so i.e. at the request of a Member if the Committee agrees with the request. The Joint Committee on European Union Affairs scrutinises information on	No formal system	Meetings in public, information on web, except for preparatory meetings with the policy advisor.

	<p>overarching legislative proposals such as the MFF or on issues like the Stability Treaty and continues to receive Ministers for oral briefings before General Affairs Council meetings.</p> <p>Ministers must consider recommendations.</p> <p>Mainstreaming gives more focussed engagement by members with an expertise in the relevant policy areas and an increase in the EU output of Committees – more reports, more use of political dialogue, more members involved.</p>		
Italy	<p>Committee on EU policies (Camera dei Deputati) — May adopt opinions on EU draft legislative acts and on other EU documents transmitted by the Government or under Protocol (No. 1), and such opinions are submitted to the competent sectoral committee, which can adopt a “final document” addressed to the Government and to the EU institutions within the framework of the political dialogue. Those draft legislative acts transmitted under Protocol (No. 2) are referred to the EU Policies Committee which can issue a Reasoned Opinion or adopt a document containing a positive assessment of subsidiarity. Both the Reasoned Opinion and the positive assessment can be referred to the plenary (within five days) by the Government, one-fifth of the Committee members or one-tenth of the members of the House.</p> <p>(Senato della Repubblica) — Sectoral (standing) Committees should examine—each for the subjects over which it has jurisdiction—EU draft measures sent by the European Institutions, Government or published in the Official Gazette of the European Communities, as well as the information reports issued by the Government on relevant Community processes and compliance of existing national measures with the provisions of the draft measure in question; for this purpose, the opinions of the Foreign Affairs Committee and the European Policies Committee (14th Standing Committee) are always gathered. Whenever it deems it appropriate, a Standing Committee may adopt resolutions laying down principles and guidelines to the Government. Since the entry in force of Lisbon Treaty, all the draft proposals, under subsidiarity scrutiny are referred to the Relevant Standing Committees for opinions to be issued.</p> <p>The 14th Standing Committee has general jurisdiction over the constitutional aspects of the activity of the EU and its bodies and the transposition of Community measures. It also has jurisdiction over compliance with Union law. It is responsible for relations with the European Parliament and the Conference of Union Affairs Committees of EU Parliaments (COSAC), and examines and reports to the Senate on the Community Bill introduced every year by the Government to fulfil Community obligations. Members</p>	Yes limited to 20 days	Meetings generally in broadcast. Minutes are published the following day.

	<p>of the Committee are also members of another Standing Committee. Double membership is seen as ensuring that members of the Committee combine knowledge of European issues with knowledge of matters within the terms of reference of the other Committee they sit on.</p> <p>In the event that the Committee responsible by subject matter does not issue an opinion in due time (six weeks) the 14th Standing Committee has a "surrogate power". This means that the 14th Committee shall convert its original non binding opinion into a final Senate resolution after a second vote by a majority of its members.</p> <p>On 14 January 2013 a new Act on Italian participation in the EU entered into force (Law N. 234/2012).</p> <p>The Act replaces Act no. 11/2005 and lays down the general legal framework for: the cooperation between the Parliament and Government in the EU affairs; the coordination of Government action at EU level (by enhancing the role of the interministerial Committee for EU Affairs - CIAE); relations between the State and the regions (including the regional assemblies) in EU decision-making; implementation of EU legislation in Italy (under two Annual Acts: the EU delegation Act and the EU ACT); the management of infringements and State-aid cases.</p> <p>The Act enhances significantly the role of the Italian Parliament in scrutinising the Government's action at EU level. To this end it obliges the Government to transmit to the Chambers: explanatory memorandum and impact assessment on draft EU legislation and consultation documents (also with reference to the subsidiarity checks); draft agreements in economic and fiscal policy; the notes and the report prepared by the Italian Permanent Representation to the EU on draft legislation, Council meetings (including COREPER and WG), negotiations, dialogues and any other relevant EU affairs.</p> <p>In addition, the Government must report to both Chambers before and after the European Council (as already provided in previous legislation) and, if requested, before and after the Council meetings.</p> <p>The Government must comply with the recommendations of the Chambers or explain why it could not comply.</p> <p>Members of the 14th Standing Committee—unlike those of the other 13 Senate standing committees—are also members of another standing committee. The</p>		
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	composition of the Committee comprises three senators belonging to each of the Constitutional Affairs, Foreign Affairs, and Economic and Budget Standing Committees. Double membership ensures that members of the 14th Committee combine deep knowledge of European issues with good knowledge of matters within the terms of reference of the other committee they sit on.		
Latvia	<p>European Affairs Committee — Government obliged to present position to Committee, which reviews and approves negotiating position. At the moment the European Affairs Committee is the only body involved in this examination.</p> <p>Latvia plans to involve sectoral committees at the early stages of draft EU legislation. If there is any disagreement between the EU Affairs Committee and the sectoral committees, the EU Affairs Committee has the final say on all EU issues. The proposed improvements of the scrutiny system will be carried out within the framework of the existing legal base.</p> <p>Currently, scrutiny of EU legislation is performed through examination of the Government's position before Council meetings, but a more thorough analysis is planned for draft EU legislative acts, which are strategically important to Latvia. The selection of important EU drafts will be made by both the Government and the Parliament at Meetings of Senior Officials (as soon as possible after receiving European Commission proposal). This draft legislation will be discussed thoroughly by the relevant sector committees in the Saeima. The Saeima may decide on its own initiative to scrutinize any other EU draft legislation.</p>	Yes	Meetings in public, minutes and documents made public.
Lithuania	Committee on European Affairs — a mixed document based and mandating system. The Committee may examine and present conclusions on all EU proposals — except proposals within the domain of CFSP and certain aspects of external relations of the European Union related to the common commercial policy and co-operation with the World Trade Organisation which are dealt with by the Committee on Foreign Affairs. The scrutiny made by the Committee is to a large extent based on the recommendations of the sectoral committees. The final conclusions of the Committee on European Affairs or the Committee on Foreign Affairs concerning possible nonconformity of the proposal to adopt a legal act of the European Union with the principle of subsidiarity are subject to approval by the Seimas plenary sitting.	Yes — politically binding	Meetings generally in public.
Luxembourg	Committee for Foreign and European Affairs, for Defence, for Cooperation and for Immigration — Receives reports before and after Council and deals with institutional issues. It examines the list of official EU documents which are sent for analysis and advice to different sectoral committees in the Chamber of Deputies. Official	No	Meetings held in private.

	<p>representatives from the Government or the EU institutions can be invited to appear before committees. Regularly and increasingly the Chamber discusses current EU matters in public session, particularly before important EU decisions, after Council meetings or at any other time when Parliament wants to take a position on recent developments. The Chamber of Deputies can ask the Prime Minister or a specific minister to speak before and after European Council meetings.</p>		
Malta	<p>EU scrutiny is carried out by the Standing Committee on Foreign and European Affairs and the working groups set up within it on the basis of an explanatory memorandum submitted by Government.</p> <p>Working Group 1, which acts in preliminary scrutiny, checks that the Government position contained in the explanatory memoranda reflects accurately the political, economic and social effects on Malta. If the information is considered to be satisfactory, the document is cleared from scrutiny. If, on the other hand, the Committee feels that further clarifications are required it can either retain the document and request additional information from the government, or else refer it to one of the other three working groups or the Standing Committee on Foreign and European Affairs, or the Standing Committee on Social Affairs, or the Standing Committee for Economic and Financial Affairs according to the subject. The Minister taking the lead on a document that has been retained for further clarifications may be requested to attend before the working group or the Committee dealing with the document.</p> <p>Once the Committee is satisfied with the information received, the document is cleared from scrutiny and the Chair of the Standing Committee on Foreign and European Affairs tables the relevant documentation in the House. Papers Laid appear in the Minutes of the House and are made available on the website of the Parliament.</p>	Yes but not statutory	<p>Meetings are held in private; Relevant documents are tabled in the House once scrutiny is complete; Papers Laid are available on the parliament's website.</p>
Netherlands	<p>Both the House of Representatives and the Senate use a decentralised work method for the scrutiny of EU proposals, which means that sectoral committees are responsible for scrutinizing EU proposals and controlling the government with regard to EU matters relating to their own policy domains. The European Affairs Committee (Tweede Kamer) and the European Affairs Committee (Eerste Kamer) have a co-ordinating role and deal with broader, horizontal issues, such as the MFF, European Semester and EU enlargement.</p> <p>Each year both Chambers adopt a priority list of legislative proposals, based on the Work Programme by the European Commission that is published in autumn. All sectoral committees examine the announced proposals in their own policy area, select priorities and then channel their lists to the European Affairs Committee. The latter</p>	<p>New information-based reserve. Special arrangements apply to those areas relating to Justice and Home Affairs which require unanimity.</p>	<p>Open meetings and documents made public.</p>

	<p>compiles the complete list of prioritized legislative proposals which is discussed with the government in a public meeting. After this debate, the final list of EU priorities is adopted by the Plenary, preferably before the 1st of January, after which it is officially published and shared with the government. The list does not exclude the possibility for sectoral committees to add priorities during the year.</p> <p><i>For detailed information, see, "How does the Netherlands reach its position?" Netherlands Parliament website</i></p>		
Poland	<p>European Union Affairs Committee (Sejm) — Preliminary review of acts. It formulates opinions for the Council of Ministers and the Government is obliged to present negotiated position to Committee which takes positions and expresses opinions. Position should form basis for government; if it deviates it must explain the reasons why.</p> <p>European Union Affairs Committee (Senate) considers EU draft legal acts and the Government's positions on them and issues opinions on those documents. EUAC may also express opinions on the Government's negotiating positions in the Council. The Committee's opinions are adopted on behalf of the Senate and they are not binding for the Government.</p> <p><i>For comment on changes to take account of the Lisbon Treaty, see "The Polish Parliament under the Lisbon Treaty — adaptation to the institutional reform", Aleksander Fuksiewicz, 2011.</i></p>	No	<p>Meetings in public, all documents released into public domain.</p> <p>Meetings webcast live, unless in closed session. Meetings open to public. Documents released into public domain.</p>
Portugal	<p>European Affairs Committee (EAC) — The EAC is the competent parliamentary committee for monitoring and assessing all European subjects of interest to Portugal, as well as those that are pending decision at European Union bodies and, in particular, the performance of the Government with respect to these subjects. The EAC is especially competent in subsidiarity control and is the only parliamentary committee which is entitled to submit a draft resolution to the plenary, within the framework of its competences.</p> <p>Simultaneously, EU matters are also discussed by the specialized standing parliamentary committees, in cooperation with the EAC, and also by the Plenary.</p> <p>Twelve permanent committees — Examine and write reports on EU initiatives — including draft legislative acts' compliance with the principle of subsidiarity - to be forwarded to the EAC, which is responsible for writing the final opinion. Following the</p>	No	Public meetings.

	<p>amendment of law 43/2006, in 2012, by law 21/2012, in 2013 the scrutiny procedure was changed and each parliamentary committee, as well as the Legislative Assemblies of the two Portuguese Autonomous Regions, through a report they sent to the EAC, expressly select - from the European Commission's Work Programme — the draft acts they wish to scrutinise the following year, bearing in mind, especially, their interest/political relevance. So, as a rule, only those draft acts are meant to be scrutinised. Additionally, the Portuguese Parliament (EAC and competent committees) actively participates at the subsidiarity control mechanism envisaged by Protocol no. 2 annexed to the Treaty of Lisbon.</p> <p>Plenary — Since the amendment of law 43/2006, in 2012, by law 21/2012, the plenary has the final word regarding voting/approving a parliamentary opinion on the scope of matters that fall within the Parliament's exclusive legislative competence, as well as regarding voting/approving a reasoned opinion on the compliance of an EU draft act with the principle of subsidiarity. Furthermore, during a legislative session, the Plenary holds a minimum of eight debates on the EU: a plenary debate in which the Prime Minister shall take part and shall be the first to speak, to be held before each European Council; a plenary debate in which the Government shall take part, at the beginning of each presidency of the Council of the European Union, on the priorities thereof, as well as on the European Commission's annual Work Programme and on the Government's annual report on Portugal's participation in the process of constructing the European Union; a plenary debate in which the Government shall take part, on the State of the Union, after the respective debate at the European Parliament and to be held during the final quarter of each year; and a plenary debate in which the Government shall take part, on the various instruments for the economic governance of the European Union that are included in the European Semester, and particularly on the Stability and Growth Programme, in the second quarter of the year.</p> <p><i>For comment on the Portuguese system, see</i> — <i>The Portuguese Parliament: Blazing the Trail to the European Scrutiny Trophy</i>, Davor JANČIĆ,²⁹¹ June 2011, in particular section called "The reform of EU scrutiny procedures: refocusing on ex ante involvement" and — <i>Implementing the Treaty of Lisbon: the Portuguese Parliament as an actor in the European legislative arena</i>, RESENDE, Madalena Meyer and PAULO, Maria Teresa, a chapter in "The Europeanization of Portuguese democracy" — ISBN 978-0-88033-946-</p>		
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291 PhD candidate in European Constitutional Law, Faculty of Law, Economics and Governance, Utrecht School of Law, Utrecht University.

	9. — New York: Columbia University Press, 2012. — p.85-109.		
Romania	<p>The Senate has an EU Affairs Committee with 11 members and the Chamber of Deputies has a separate EU Affairs Committee.</p> <p>The European Affairs Committee and the sectoral committees discuss the general policy, the EU draft legal acts based on priorities and national legal acts transposing adopted EU legislation. The Plenary votes on legislation and the reasoned opinions or opinions proposed by the committees regarding the EU draft legislation. For the ratification of Treaties, the Parliament retains full power.</p> <p>The Camera Deputaţilor (Chamber of Deputies) on 19 April 2011 adopted a new legal framework on its participation in European affairs (Decision of the Romanian Camera Deputaţilor No 11/2011).</p> <p>In the Senatul (Senate), the internal subsidiarity control mechanism has been amended to focus more on horizontal cooperation between the Committee on European Affairs and specialized committees. The aim is to provide for timely scrutiny of priority proposals and improved information exchange between the Senatul and the Government.</p>	Yes	Not generally open to the public.
Slovakia	<p>According to the Constitutional Act and the amendments to the Rules of Procedure the NC SR Committee on European Affairs has been delegated powers to approve on behalf of the National Council of the Slovak Republic the positions of the Slovak Republic concerning proposals for legislative and non-legislative acts of the European Union. The positions approved by the NC SR Committee on European Affairs are binding for the Government of the Slovak Republic.</p> <p>Members of the Government of the Slovak Republic have to submit to the Committee on European Affairs for its approval the positions of the Slovak Republic concerning proposals for legislative and non-legislative acts of the European Union before they agree upon them either in the EU Council or in the European Council; such submission must be done 2 weeks prior to the respective meeting. If the Committee on European Affairs fails to express its opinion on the position proposed by the Government of the SR or if the Committee fails to approve such the position without adopting another position on the matter, the member of the Government of the SR is authorized to act on the originally proposed position of the Government of the SR.</p> <p>The amendments to the Rules of Procedure elaborate on further aspects of the EU scrutiny competence of the NC SR Committee on European Affairs vis-à-vis the</p>	CEA can use a scrutiny reserve but only uses it in specific cases	Sessions of the CEA are public.

	Government of the Slovak Republic (including the delivery of the preliminary positions by the Government of the Slovak Republic concerning proposals for legislative and non-legislative acts of the European Union and also including the arrangements concerning the new powers entrusted to the EU National Parliaments by the Treaty of Lisbon).		
Slovenia	<p>According to the Act on Cooperation between the National Assembly and the Government in EU Affairs, the National Assembly shall participate in the formulation of positions of the Republic of Slovenia in relation to those EU affairs that given their subject matter would come under its jurisdiction in accordance with the Constitution and laws. The National Assembly shall discuss the draft positions of the Republic of Slovenia or express its intent to discuss such within the time limits required by the work within EU institutions, or the draft shall be deemed the position of the Republic of Slovenia. At the proposal of the Government or at its own initiative the National Assembly may also discuss other EU affairs.</p> <p>Most of these EU Affairs are discussed and the positions thereon taken by the Committee on EU Affairs, except the affairs concerning foreign and security policy which are in the competence of the Committee on Foreign Policy.</p> <p>International relations and European Affairs Committee (National Council) — May convey to the National Assembly its opinion on all matters within the competence of the Assembly. A member of the Council attends meetings of the EU or Foreign Policy Committees of the Assembly to do so.</p>	On the proposal of the Government or on its own initiative the Committee can have a scrutiny reserve over the proposal of the EU legislation in order to explore the proposal in more detail.	According to the Rules of the Procedure, the sessions of the National Assembly and meetings of its working bodies are open to the public. A session or a meeting or part thereof may be closed to the public if the National Assembly or the working body discusses materials containing confidential information or other information that is protected pursuant to the law.
Spain	Joint Committee for the European Union — Discusses EU laws, adopts resolutions to guide the action of the government in EU matters. May organise debates on a specific proposal for legislation.	No	<p>Bureau and spokespersons meetings usually held in private.</p> <p>Committee meetings may be attended by media and are webstreamed unless they are secret.</p>
Sweden	<p>Committee on EU Affairs Discusses government's position prior to Council of Ministers. Is focused on formulation and issuing voting instructions. The Government's consultations with the Committee on EU Affairs are to concern decisions in the Council of Ministers.</p> <p>Fifteen Sectoral committees Examine and write statements on Green and White Papers and other (non-legislative) EU documents. The Government confers with the specialized committees at the early</p>	Yes	<p>Private meetings mostly. Open meetings before the European council. Documents and records of meetings published on website.</p> <p>Private meetings. Reports, statements as well as extracts from the</p>

	<p>stage (throughout and up to decision-making stage) of the parliamentary process. Examine all draft legislative acts' compliance with the principle of subsidiarity. Propose reasoned opinions to be adopted by the plenary.</p> <p>Mandates are politically but not legally binding. (Non compliance can risk criticism from the Committee on the Constitution.)</p> <p><i>See Riksdag document, "Consideration of documents coming from the European Union" for details of process.</i></p>		committees' meetings are published on the website.
UK	<p>House of Commons European Scrutiny Committee has a sifting role to identify documents of legal and political importance; as well as conduct inquiries on wider issues arising and propose Reasoned Opinions for decision in plenary. Departmental Select Committees can have documents referred to them for opinion. The Scrutiny Committee has the power to refer documents for debate in specialist European Committees, and can also recommend that a debate takes place on the floor of the House.</p> <p>http://www.parliament.uk/documents/commons-committees/european-scrutiny/ESC%20Guide%20Revised%202012.pdf</p> <p>House of Lords European Union Committee: Examines important EU documents and policies. Usually works through six subject specialist sub-committees, with cross-cutting issues considered by the main Committee. The Committees put their views to UK Ministers through correspondence and at public hearings. On around 15 major policy issues per year, they also take evidence from EU institutions and others, and publish detailed reports.</p> <p>http://www.parliament.uk/documents/lords-committees/eu-select/Lords-EU-scrutiny-process.pdf</p> <p>Scrutiny reserve not statutory.</p>	Yes	Meetings held in public and private. Transcripts and recordings of evidence sessions available. Committee reports published and available online.

Formal minutes

Wednesday 20 November 2013

Members present:

Mr William Cash, in the Chair

Andrew Bingham
Mr James Clappison
Michael Connarty
Geraint Davies
Nia Griffith
Chris Heaton-Harris

Kelvin Hopkins
Chris Kelly
Stephen Phillips
Jacob Rees-Mogg
Linda Riordan
Henry Smith

The Committee deliberated.

Draft Report (*Reforming the European Scrutiny System in the House of Commons*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 282 read and agreed to.

Summary and Annexes read and agreed to.

Resolved, That the Report be the Twenty-fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 27 November at 2.00 p.m.]

Witnesses

Wednesday 31 October 2012

Page

Rt Hon David Lidington MP, Minister for Europe, and **Jill Morris**, Additional Director, Europe, Foreign and Commonwealth Office

Ev 1

Wednesday 28 November 2012

James Brokenshire MP, Parliamentary Under-Secretary of State for Crime and Security, **Kenny Bowie**, Head of the Opt-In and Treaties Team, and **Fiona Fraser**, Legal Adviser, Home Office

Ev 13

Wednesday 12 December 2012

Dr Katrin Auel, Assistant Professor, Institute for Advanced Studies, Vienna, **Dr Ariella Huff**, Postdoctoral Research Associate, and **Dr Julie Smith**, Senior Lecturer, University of Cambridge

Ev 25

Wednesday 16 January 2013

Rt Hon Sir Alan Beith MP, Chair of the Liaison Committee, **Rt Hon Keith Vaz MP**, Chair of the Home Affairs Committee, and **David T C Davies MP**, Chair of the Welsh Affairs Committee

Ev 41

Wednesday 6 February 2013

Ric Bailey, Chief Adviser, Politics, **Mary Hockaday**, Head of Newsroom, BBC, and **Peter Knowles**, Controller, BBC Parliament

Ev 53

Wednesday 13 February 2013

Ms Gisela Stuart MP

Ev 68

Wednesday 6 March 2013

Chris Bryant MP, **Martin Horwood MP**, **Andrea Leadsom MP**, **Richard Bacon MP**, **Chris Heaton-Harris MP** and **Robert Broadhurst**

Ev 74

Wednesday 13 March 2013

David Keighley, Newswatch

Ev 87

Wednesday 24 April 2013

Robin Elias, Managing Editor, ITV News, and **John McAndrew**, Associate Editor, Sky News

Ev 95

Wednesday 8 May 2013

Sir Jon Cunliffe CB, UK Permanent Representative to the EU, and **Simon Manley CMG**, Director, Europe, Foreign and Commonwealth Office

Ev 104

Wednesday 12 June 2013

Professor Simon Hix, London School of Economics

Ev 118

Thursday 4 July 2013

Rt Hon David Lidington MP, Minister for Europe, **Owen Jenkins**, Head of Western Balkans Department, and **George Hodgson**, Head of Parliamentary and Communications Department, Foreign and Commonwealth Office

Ev 127

Wednesday 4 September 2013

Professor Damian Chalmers, Professor of European Union Law, London School of Economics and Political Science

Ev 146

List of written evidence

(published in Volume III on the Committee's website www.parliament.uk/escom)

1	Fresh Start Project	Ev w1
2	European Conservatives and Reformists Group, European Parliament	Ev w2
3	Office of the City Remembrancer of the City of London Corporation	Ev w4
4	David Millar OBE	Ev w5
5	Foreign and Commonwealth Office	Ev w5; Ev w39; Ev w40; Ev w41
6	Dr Ariella Huff and Dr Julie Smith, University of Cambridge	Ev w9
7	Chris Heaton-Harris MP and Robert Broadhurst	Ev w11
8	Liberal Democrat Parliamentary Party Committee on International Affairs	Ev w19
9	Liaison Committee	Ev w23
10	Environment, Food and Rural Affairs Committee	Ev w26
11	David Keighley, Newswatch	Ev w27; Ev w36
12	BBC	Ev w29
13	Peter Knowles, Controller, BBC Parliament	Ev w36
14	Government Chief Whip	Ev w40
15	Prime Minister	Ev w40
16	Committee of Selection	Ev w43
17	Foreign Secretary	Ev w43; Ev w44
18	Chairman of the European Scrutiny Committee	Ev w44; Ev w45; Ev w46
19	Lord Patten, Chairman of the BBC Trust	Ev w44; Ev w46; Ev w47