Reforming the European Scrutiny System in the House of Commons

Twenty-fourth Report of Session 2013–14

Volume II

Oral evidence

Written evidence is contained in Volume III, available on the Committee website at www.parliament.uk/escom

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The European Scrutiny Committee

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

Current membership

Mr William Cash MP (Conservative, Stone) (Chair)
Andrew Bingham MP (Conservative, High Peak)
Mr James Clappison MP (Conservative, Hertsmere)
Michael Connarty MP (Labour, Linlithgow and East Falkirk)
Geraint Davies MP (Labour/Cooperative, Swansea West)
Julie Elliott MP (Labour, Sunderland Central)
Tim Farron MP (Liberal Democrat, Westmorland and Lonsdale)
Nia Griffith MP (Labour, Llanelli)
Chris Heaton-Harris MP (Conservative, Daventry)
Kelvin Hopkins MP (Labour, Luton North)
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Jacob Rees-Mogg MP (Conservative, North East Somerset)
Mrs Linda Riordan MP (Labour/Cooperative, Halifax)
Henry Smith MP (Conservative, Crawley)
Ian Swales MP (Liberal Democrat, Redcar)

The following members were also members of the committee during the parliament:

Sandra Osborne MP (Labour, Ayr, Carrick and Cumnock)
Jim Dobbin MP (Labour/Co-op, Heywood and Middleton)
Penny Mordaunt MP (Conservative, Portsmouth North)
Mr Joe Benton MP (Labour, Bootle)

Powers

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.

Committee staff

The staff of the Committee are Sarah Davies (Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Leigh Gibson (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Hannah Finer (Assistant to the Clerk), Julie Evans (Senior Committee Assistant), Jane Lauder (Committee Assistant), Beatrice Woods (Committee Assistant), John Graddon (Committee Assistant), and Paula Saunderson (Office Support Assistant).
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Oral evidence

Taken before the European Scrutiny Committee on Wednesday 31 October 2012

Members present:

Mr William Cash (Chair)
Mr James Clappison
Michael Connarty
Julie Elliott
Nia Griffith
Ivan Smyth
Kelvin Hopkins
Chris Kelly
Penny Mordaunt
Jacob Rees-Mogg
Henry Smith

Examination of Witnesses

Witnesses: Rt Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, Jill Morris, Additional Director, Europe, FCO, and Ivan Smyth, Legal Counsellor with Joint Responsibility for the EU and Wider Europe, FCO, gave evidence.

Q1 Chair: Minister, thank you very much indeed for coming on this rather important day, for a variety of reasons. As you know, the Committee itself has decided to hold this inquiry because we feel that the time has come to have a good look at European scrutiny, given the huge importance that it has for the conduct of Government and for the conduct of the affairs of the United Kingdom. We have invited written submissions on a range of matters, including: the purpose and background for the current scrutiny system; the sifting role and its place in the wider context of the House of Commons in relation to Select Committees, debates and questions on the Floor of the House and primary legislation; the mechanism that applies whereby the Committee refers documents to the European Committees; the expectations, understanding and coverage of the scrutiny process within and outside Westminster; potential changes to the current Standing Orders and the Scrutiny Reserve Resolution; and the current system of Government Explanatory Memoranda for depositing documents. Given that, my first question would be: if you had to choose a scrutiny system from elsewhere in the EU to import here, which would you choose and why, given the fact that we are trying to ask an English and not an Irish question as to where you start from? Our role is set by the House, but would the Government’s view be of this Committee being given a stronger mandating role along the lines of the Danish or Finnish models?

David Lidington: Chairman, before I start, I will just ask my officials to introduce themselves to the Committee, for the record.

Jill Morris: Thank you, Minister. I am Jill Morris. I am Additional Director Europe, within the Foreign Office.

Ivan Smyth: I am Ivan Smyth, Legal Counsellor in the EU and Wider Europe Team, FCO Legal Advisers.

David Lidington: Let me come, Chairman, to your question. Now, tempting though it is for me to make Coalition Government policy on the hoof in answer to a perfectly fair and direct question, I am sure, Chairman, you will understand that I am not going to do so, but I am not going to avoid your question. The first point I want to make is this: ultimately it is Parliament that owns the scrutiny process. Clearly, given the British constitutional system and where the Executive sits in the legislature, the Government does have a significant voice in determining Parliament’s view, but I would very much not want to give the impression that I am coming into this debate with a set view on behalf of the Government as to what Parliament ought to do and say. When I floated suggestions more than a year ago for Parliament to re-examine the question of how we do scrutiny, I very consciously sought to invite parliamentarians to come forward, and I think the Committee’s inquiry is a very important element in that process.

To come to your question about the different models, it seems to me that the fundamental choice that has to be made is whether in the United Kingdom we want to retain a system that is document-based—and our version of that I think we would describe as a pretty strong document-based system—or whether we want to move to a mandate system such as that practised in the Scandinavian countries. While I have not consulted Government colleagues about this, and so I am venturing something of a personal opinion, I think that there would be reluctance in Government to go as far as the Danish system that does introduce a degree of rigidity. If there were a consensus in Parliament to move towards a mandating system, clearly the Government would want to consider such a suggestion very seriously, but it would of course raise important related questions. For example, the mandate systems that apply in Sweden and Finland do, in part, rest upon the Minister being able to go in to discuss with the Committee in confidence the Government’s negotiating position in advance of a forthcoming Council meeting and obtain the Committee’s consent to quite a wide-ranging and reasonably flexible mandate, given that in most cases we are looking at trying to build qualified majorities in support of a particular proposal or a blocking minority to stop one being agreed, and the Committee respecting the confidentiality of those sessions. That would be a departure from the current system, where the Committee publishes its reports and makes them...
available to Parliament and the wider public; it would be making an important element of such a system confidential in the way that this is not. As I say, the Government would look at this seriously if there were a consensus in Parliament to that effect.

I think other possible reforms that I would welcome seeing examined would be making more extensive use of the expertise the departmental Select Committees already have. 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.

I think there is an issue that you may wish to discuss further, Chairman, to do with arrangements during recess, where we would all acknowledge there are some problems, particularly when it comes to justice and home affairs measures. I am very open to discussion of more early contact between officials and parliamentarians directly, as I say, on an informal basis, to get a better informed view of how Government policy and thinking in the EU institutions is developing. I would not oppose this Committee drawing more extensively on the Government’s Explanatory Memoranda in its published reports and providing greater transparency in that way. As I said before, Chairman, I think we need to review the EM system from time to time. I completely accept that sometimes there are errors that take place on the Government’s side and we do not deliver to the standard we need and ought to, but also there are questions about whether we are setting the right priorities. A great many of the documents that come to this Committee are not of huge political significance or controversy. Is there a way in which we can try to streamline the system so that more time is given, both by my officials in preparing Memoranda and by Committees in examining European documents, to those things that are genuinely politically important, and having a more streamlined process for the less significant things? I appreciate that involves a qualitative judgment. It is not easy to get that right, but again it seems it would be worth considering that, particularly given that the post-Lisbon processes are producing a significant increase in the number of European documents.

Q2 Michael Connarty: Welcome, Minister. As usual, you have extrapolated beyond the first question into the second question, which I was going to ask, but I would like you to be more specific in assessing the strengths and weaknesses of the current system. You have given some views about what might be moved around. What specific proposals do you have to offer the Committee? You are not necessarily offering them to the Government, so you are free to be as inventive as you wish, but could you base them on what your view is fundamentally of the purpose of scrutiny and then assess what we do now, strengths and weaknesses?

David Lidington: I think the strength of what the Committees do now is that they look in detail at the documented proposals coming out of the European institutions. Those are examined very carefully for questions of compliance with the treaties—for example, whether the right article has been cited. They are examined very carefully for any evidence of competence creep and whether the institutions are acting beyond their powers. I have noticed just in the last two years a greater concern being expressed about value for money—and this is coming from the Lords as well as the Commons Committee—when it comes to discussions about the budgets for particular policies or missions. That is something that I welcome.

The fact that there is a scrutiny reserve system I think is a strength. It does mean that sometimes we will vote against a measure because it has not cleared scrutiny in time for the Council. On other occasions, the fact that the scrutiny reserve has existed has meant that we have been able to persuade the Commission or the External Action Service to hold off bringing something to a Council meeting to allow proper time for the scrutiny process to take place. It does not always work, but it has happened on a number of occasions.

I think the weaknesses of our system are that, in particular, because it is document-based it tends to be almost last minute, whereas my assessment is that European policy goes through this process of development over perhaps a couple of years. Initially, ideas are kicked around informally in the Commission and in the Brussels political network, and then you have a first draft proposal. That goes out for consultation, and then you start to get into the negotiations at official level in Brussels and between national capitals. The Committees tend only to come in at a later stage. You obviously get the earlier versions of the documents, but sometimes it is really only when you come to the crunch point for a decision at Council that the scrutiny process comes into play. Within Government, I have been trying to encourage my colleagues across Departments to put much more effort into what the jargon terms “upstream engagement”, because I think we are more likely to get outcomes that suit the United Kingdom if our officials know what the Commission is gossiping about in advance. We should be getting at the work programmes and White Papers and putting our thoughts in, instead of waiting, as I think we have too often done, until we get the first published draft, by which stage sometimes, unsurprisingly, it reflects what another country does anyway. It is much more difficult, of course, to change once a text has been published than if you are in there when the initial drafting is going on. I suppose I would like to see Parliament do something more of the same, and probably it has to be through the departmental Select Committees. I am assuming they take that role more seriously.

I also think there is a strong case for a review. As the Committee knows, the Government is about to start on this review of the current balance of competences. It will be a very, very wide-ranging audit of the United Kingdom’s relationship with the European Union. I would welcome the occasional review by Parliament of how a particular European measure has worked out in practice: where it has...
Q3 Mr Clappison: Welcome, Minister, and thank you for your helpfulness on these occasions and the thoughtfulness of your approach towards these matters. Can I urge upon you one item that seems to be missing from the Foreign Office’s analysis of the purpose of scrutiny? That is the timing of scrutiny. Do you agree that it is universally a good thing for scrutiny to take place before a law is agreed to?

David Lidington: Yes, I do.

Q4 Mr Clappison: Because I and another colleague of this Committee had the experience last week, not for the first time, where we found ourselves debating an important issue, a Directive about dangerous installations, after this Committee had exercised its Scrutiny Reserve. We found the Scrutiny Reserve overridden; the Directive had been agreed to in principle by our Civil Service representatives, and we found ourselves debating something after it had passed into law. There were some very interesting questions of detail that were raised and constituency issues that were raised by another member of this Committee—very important issues. The Minister gave very good answers, but none of it mattered at all because it had already been agreed to. That is a bit of a travesty, is it not, of parliamentary democracy, because we would not start to debate laws in this House affecting us domestically after the Government had introduced them? Governments do not introduce laws and say, “Here is a law; what do you think about it?” after they have brought them into force.

David Lidington: No, I completely agree.

Q5 Mr Clappison: It is not the first time it has happened.

David Lidington: No, I appreciate that. My view is that there ought to be arrangements that mean, so far as is humanly possible, a proper considered process of scrutiny can take place before there is final agreement or, if there is no agreement, a formal override takes place. I do not know the detail of this particular case; I will look into that and see exactly what happened. What does, of course, sometimes take place is that the Brussels process involves lengthy and complicated negotiations between Member States and the Commission, and then, suddenly, at a relatively short period before a Council meeting, a text is finally negotiated that commands sufficient agreement. At the end of the day, we can argue with the Presidency that they should not table a particular measure at Council even though it has been agreed, but we do not have the ultimate power to wrest the pen from their hands.

Q6 Mr Clappison: What you are saying is a very powerful critique of the European Union insofar as it has a relationship to parliamentary democracy, because the feeling that I was certainly left with after that Committee meeting and other similar meetings I have attended was that we are not even given the dignity of being called a rubber stamp. There are powerful civil service groups in the European Union and European Commission. Our Civil Service was talking to them over a period of years, Ministers coming and going. All the power is in the hands of Civil Servants to judge what they regarded as the national interest, and parliamentary democracy was the rubber stamp or less than the rubber stamp.

David Lidington: I do not think it is fair to say that it is simply a matter of Civil Servants. I cannot speak for what happened under previous Governments, but certainly under this Government the negotiating position for the United Kingdom has to be set at ministerial level by a write round or a discussion at the European Affairs Committee of Cabinet, with the responsible Minister having to make a proposal that his colleagues are prepared to endorse, which may well be amended in the course of that ministerial discussion. That then governs what officials are able to negotiate. That gives them their framework for negotiation, and if there are difficulties it comes back to the Ministers here.

Q7 Mr Clappison: Those submissions are agreed to by Ministers on the basis of advice from Civil Servants. As you have told us, this is a process that goes on over several years and delivers all the power into the hands of the Civil Servants as to what they judge to be the national interest.

David Lidington: No. Ministers retain all the powers that they have always had to override the advice of civil servants. It is quite right that we are advised by people who are experts in a particular field, but if you, as a Minister, simply decide to reject the option that your officials are urging on you, the officials will go away and do, ultimately, what the Minister tells them to do.

The real problem here is that the culture of European Union institutions gives insufficient weight to national Parliaments. There are two ways of addressing the problem Mr Clappison has identified, which are not mutually exclusive. One would be to shift towards more of a mandating system, so that after, or perhaps even before, the Cabinet Committee had agreed something, the Minister would come and discuss that proposed mandate with the Committee in closed session. That would be one way of doing it. I am not giving any Government commitment to such a system, but that would be a model that would address that problem. The other would be for the European Union institutions to arrange their business in such a way as to give greater weight to national Parliaments that are explicitly mentioned in the treaties as institutions that have a significant role to play. The Foreign Secretary, when he spoke on the future of Europe in Berlin last week, made a point of saying that he thought the democratic deficit in the EU could only be overcome if a much greater role was given to national Parliaments, because they, not the European Parliament, were the institutions that were closest to the people.

Q8 Kelvin Hopkins: Minister, would European Committees be more effective with a permanent membership, which would develop members’ familiarity with the subject matter and procedure and
engender more commitment? Having been a member of permanent committees from 1997 to 2005 and sat on many ad hoc Committees since then, I have a view, which I have put many times on the Floor of the House and elsewhere, but would you favour a permanent membership system?

David Lidington: My views on this are coloured by the fact that I served on one of the permanent committees between 1992 and 1997. 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 from all parties who were willing to give that degree of commitment to permanent membership, whereas they found it easier to say to colleagues that they would be required for duty to a limited extent only. They could get people to turn up on that basis, but I think they found that attendance was slipping badly in the latter years of the permanent committee membership. So I think that there would need to be some evidence, to be honest, beyond members of this Committee, who are, by definition, going to be interested in EU matters, that there was an appetite to take permanent membership seriously for that to fly.

Q9 Kelvin Hopkins: There could be an overlap in membership between this Committee and those Committees, that is one possibility. But the reality now is that, because of the ad hoc arrangements, many Members come along and do not know what the procedure is and do not know really what they are doing. Some have an interest in making contributions, many do not. Many regard them as a duty, a chore, rather like, it is sad to say—I do not want to be disparaging of my colleagues—SI Committees, where people come along and sit there quietly while the Minister speaks and then go away. That is often the pattern. We have to deal with these things more seriously. Do you think that the current system needs some kind of reform?

David Lidington: Yes, I do, and I have tried to suggest a number of ways in which that might be done. But I think it has to have buy-in from a very significant number of Members of Parliament across the House. If I sat down with the members of this Committee and just designed a system that we thought was perfect, if we did not have the practical support in terms of personal involvement and commitment from other Members of the House, it just would be a bit of a Potemkin exercise.

Q10 Nia Griffith: Welcome, Minister. Could I draw your attention to what has been going on in the National Assembly for Wales, where they have effectively mainstreamed European issues and have got rid of their European and External Affairs Committee and put the business into the ordinary committees they have. What would you see as the potential advantages and disadvantages of that?

David Lidington: The loss would be in it having a centre of expertise that the scrutiny Committees provide and probably less acute analysis of particularly the constitutional and legal significance of European Union documents. I think people who have served on European Scrutiny Committees—and indeed this applies also to Mr Hopkins’ question of people who served under the old system for several years on one of the Standing Committees—got to know the Brussels jargon. They could work out fairly promptly what were the politically significant issues that were at stake in a particular draft directive or regulation.

The big advantage of the system that the Welsh Assembly has adopted is that it would really force members to do what I believe they need to do, which is to think of European legislation as part of the United Kingdom’s lawmaking process, rather than something that was kept in an annexe that you only turn to when you absolutely have to. While some of the reports about the extent to which our legislation is determined by Brussels are exaggerated, there is no doubt that very significant laws affecting agriculture, industry and finance are derived from European law. It is right that more Members of Parliament should see scrutinising European law as part of their duty.

Q11 Nia Griffith: So in terms of our own departmental Select Committees, do you think they have the capacity and the potential to undertake this role? How might that work or not?

David Lidington: They would need probably to draw on perhaps a pool of experts who would have knowledge of European law and of how the institutions operate. I think they probably need a bit more than the support they have at present.

Q12 Nia Griffith: Given that essentially they work on the basis that they choose what items and issues they are going to scrutinise, what sorts of changes might be necessary to get some sort of consistency across the board?

David Lidington: Consistency of support?

Nia Griffith: To get some consistency across the board. A Committee can say, “We are not going to do anything.” Another Committee might say, “Yes, we are really interested.” We could not run it under the current system, could we?

David Lidington: There is no magic answer to this, because ultimately any Select Committee determines its own agenda. 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.

Q13 Michael Connarty: I had the good fortune to meet our colleagues from Wales at the last joint meeting of the committees in Belfast, and I think they certainly have made a very impressive structure that works for them. But what we have in here, of course, is the House of Lords, and its European Sub-Committees are like Select Committees of the House of Lords, and they do all these inquiries. The idea of repeating that or trying to take that over in
the departmental Select Committees of the Commons would clearly bring those two either into a situation where they would be duplicating each other or one would have to take precedence over the other. So we do have a Select Committee system in a way where subjects are looked at very intensively by the Lords, and I just wonder what the benefit would be in doing it at the departmental level here. I know that five of the last 12 reports of the EFRA Committee have been about European matters, but apart from that Committee I just wonder if we would not be setting up a situation where we would either have to supersede what the Lords does or duplicate it.

David Lidington: Some of us who supported Lords supersede what the Lords does or duplicate it. Committee I just wonder if we would not be setting about European matters, but apart from that the last 12 reports of the EFRA Committee have been at the departmental level here. I know that five of and I just wonder what the benefit would be in doing subjects are looked at very intensively by the Lords, do have a Select Committee system in a way where would have to take precedence over the other. So we

Q14 Nia Griffith: Obviously it can be very helpful to Government if a Select Committee does an inquiry and comes up with some facts and reports back on recommendations that very much strengthen the Government’s hand in negotiation. What would happen if a Select Committee were to come up with something that was perhaps very much in disagreement with Government policy? Would that be helpful?

David Lidington: It is not a challenge with which Governments are unfamiliar, whichever Government is in office, so I think Ministers would just have to take that in their stride.

Q15 Chair: Minister, I just quickly refer to the Liaison Committee, on which obviously I sit, and the fact that in a letter to our Committee that committee has suggested that there is merit in each Committee perhaps having a rapporteur to monitor developments, which seems to have quite a lot of merit in it. You get that continuity and each Select Committee would be able to turn to that person and say, “Is this something that we ought to be considering?” The other, of course, is the possibility, again mentioned in Liaison Committee suggestions, that under Standing Order 152, departmental Select Committees can appoint sub-committees, so they may choose to appoint one if they are particularly interested. I think that might help to bridge the issue. I will leave it at that for the moment, because I think we need to move on to the next question, but just as a matter of interest I notice that you take that on board.

David Lidington: Yes, constructive suggestions, I think.

Chair: Thank you very much. I now turn to business on the Floor of the House.

Q16 Julie Elliott: Mine is quite a straightforward question and it is: should this Committee be able to refer documents directly for debate on the Floor of the House?

David Lidington: The Committee has the power to recommend. 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. Obviously, if we are looking at time on the floor that is the property of the Backbench Committee, it becomes an issue for them. I suppose I am finding a somewhat lengthy way of saying “no” in answer to the question.

Q17 Nia Griffith: We simply wanted to ask you, Minister, whether you think there should be a proper European Minister’s question time. In other words, questions to the European Minister, so we can single out the issues that really concern us with Europe, because we all know that FCO questions are dominated by the huge range of interests that there are.

David Lidington: I am tempted to say that is a matter above my pay grade, but I can see advantage and disadvantage to that. I thought it was striking at FCO oral questions yesterday that there was no question on the Order Paper at all about the European Union. Well, I correct myself: there were a couple, but they were very low down on the Order Paper and not reached. The only one that was reached was a question about the exploitation of hydrocarbon resources off Cyprus.

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. While the holder of my office tries to keep an eye upon the most important dossiers where other Departments have the lead, inevitably you will not know all the detail of this.

Q18 Nia Griffith: That happens in other spheres, with respect, Minister. If you take the Minister for Women and Equalities, for example, you could simply say that every department should be likewise implementing policies that are appropriately respecting of equal rights and so forth. So, in a way, that is not really an excuse for getting out of it.

David Lidington: I am not usually seeking to duck out of parliamentary appearances, but I think it is more a
question of ensuring that Parliament gets value out of any such question time. As a Foreign Office-based Minister, I would be able to answer questions about, for example, Banking Union at the moment, but I would not feel confident, without a great deal more briefing, of going through every particular financial services measure that is currently under live consideration within the institutions.

A different way perhaps to address this would be to revert to the experiment that was attempted under the last Government, but has been dropped, of having cross-cutting sessions in Westminster Hall, where you had a selection of Ministers with overlapping areas of responsibility who were available to answer questions for about an hour from any Member who attended.

Q19 Henry Smith: Your written Ministerial Statements of 20 January 2011 set out a series of commitments to enhance scrutiny of EU justice and home affairs matters. So far, as you know, there have been two Lidington debates that have taken place, both in unsatisfactory circumstances. Do you accept that the Government has fallen short in some respects? I would like to put you to answer the written Ministerial Statements, and how do you propose that those should be addressed?

David Lidington: We have been having serious discussions about this, because there have been, as Mr Smith says, some problems over one or two of those debates. Let me be absolutely open with the Committee: we are in a Government where not only do positions have to be agreed inter-departmentally in the normal way but of course there is a coalition element to establishing a Government position. For reasons that the members of the Committee will understand, some justice and home affairs measures touch on quite delicate coalition sensitivities amongst both parties. In these particular cases, I think in April and in May of this year, the Government opt-in position was only established a couple of days before the debate was taking place—I know the Committee has argued that it needs to know at least a week in advance, and that is a perfectly fair request—and I think we need to do more internally within the Government to try to avoid this. I have had meetings at ministerial level with colleagues in both the Ministry of Justice and the Home Office, and our officials have also met on a trilateral basis to try to work out a way forward here. I do regard it as very important that we deliver and deliver effectively on the undertakings we gave last January.

Q20 Mr Clappison: These are opt-in measures to new European measures following the Treaty of Lisbon, which set the objective of Europeanising justice and home affairs and creating a European legal system, and brought it all within the formal framework of European treaty legislation. We have to decide what we are going to do about the existing measures that were agreed to before Lisbon—the 130 or so pre-Lisbon matters. The Government recently, with great fanfare, announced that it was going to exercise its right to a block opt-out on those, but that there was going to be a vote in Parliament on this. At the same time, the Government also said that they would then consider whether to opt back in to these measures on an individual basis. Can I put the same point that Henry has just put to you on this? We need to know in advance, don’t we, what the Government is going to do on individual measures? Because people would feel a bit hoodwinked if the Government, after announcing with fanfare that it was going to exercise its opportunity to opt out, then opted back in to, say, a majority of the directives that it had opted out of.

David Lidington: What the Home Secretary said in her oral statement was that we are minded to exercise the right to a mass opt-out and then to negotiate, as we would be required to do, to seek to opt back in to a selection of those 130 or so measures. Of course, under the Treaty we do not have the right to opt out selectively. The only way that we can be selective would be to opt out en masse and then to seek the agreement of the Commission and other Member States to opt back in to a particular set of measures. Now, the Chairman has written to the Home Secretary very recently asking a number of detailed questions. My understanding is that the Home Secretary intends to reply to the Chairman within the next couple of days, and I do not want to say anything that pre-empts her response. We have said all along—I said this during debates on what became the European Union Act 2011—that when the time came for this decision, there would have to be a parliamentary debate on the Floor of the House and the opportunity for Parliament to vote. We have also committed ourselves as a Government to consulting Parliament about the format and timing of that vote. So the invitation is there to this Committee, to the equivalent committee in the Lords and to the Justice and Home Affairs Select Committees to put to us your views as to how that parliamentary debate and vote or votes should be organised.

Q21 Jacob Rees-Mogg: On those things that are opted out of that the Government wishes to opt back in to, what will the scrutiny procedure be?

David Lidington: That is something I must leave to the Home Secretary to respond to in her response to the Chairman. I genuinely do not want to be difficult, but I think it would be wrong for me to pre-empt her response. We have said all along—I said this during debates on what became the European Union Act 2011—that when the time came for this decision, there would have to be a parliamentary debate on the Floor of the House and the opportunity for Parliament to vote. We have also committed ourselves as a Government to consulting Parliament about the format and timing of that vote. So the invitation is there to this Committee, to the equivalent committee in the Lords and to the Justice and Home Affairs Select Committees to put to us your views as to how that parliamentary debate and vote or votes should be organised.

Q22 Michael Connarty: Chairman, if you do not mind, could I just ask one small supplementary question to that last answer? Is the Minister saying that this matter has not been discussed with him or that he does not feel that he has the authority to speak to the Committee about the matter?

David Lidington: What I am saying is that there has been a letter from the Chairman to the Home Secretary, and it is for the Home Secretary to respond. The Home Secretary of course does consult other Departments on matters such as this that cut across different departmental responsibilities, but I think it is for her to reply to all the questions that the Chairman has raised and not for me to pre-empt that.
Q23 Jacob Rees-Mogg: Do you think it is possible, Minister, that the 2011 Act will apply to any of the opt-back-ins? I have no doubt that the 2011 Act will apply to any of the opt-back-ins. David Lidington: No, I do not, because the 2011 Act imposed a referendum lock upon future changes to the treaties, and what we are now talking about is the operation of certain articles of the Lisbon Treaty. There are some exceptions to that that Mr Rees-Mogg will be familiar with, but also in the 2011 Act are specific locks on a small number of justice and home affairs measures, including, in particular, the creation of a European public prosecutor. Now, of course there is no pre-Lisbon provision for a European public prosecutor. I am speculating somewhat, but I think the more likely proposition is that, since there is no such provision, we could not opt back in. Rather there would have to be a new proposal or an amending proposal from the European Commission to create such an office, and then that would be a new post-Lisbon proposal, which would be caught by the 2011 Act. Chair: I would like to move on now to scrutiny overrides and common and foreign security policy.

Q24 Michael Connarty: I am sure the Minister knows that the majority of scrutiny overrides arise from Common Foreign and Security Policy documents. For example, between July and December 2011, there were 52 overrides, 40 of which were from Foreign and Commonwealth Office instruments. The equivalent figure for January to June 2011 was 32 overrides and 28 from Foreign and Commonwealth Office instruments. This has been the subject of considerable debate in the last Committee and the last Government. Is there a risk that these overrides devalue the Scrutiny Reserve Resolution?

David Lidington: I hope not. I am speaking quite honestly when I say I always dislike it when advice comes to me with the override as the advice or even as an option. As I mentioned earlier, there have certainly been cases where I have gone back and told officials to tell Brussels that I was not prepared to override, because I thought the institutions had not given adequate time and there was not a demonstrable emergency about the measure. We continue to say to both the Commission and the EAS that they need to make documents available earlier, and they need to bear in mind that there is a proper scrutiny process and that it is just to allow adequate time for that. But there are also some genuinely urgent decisions that need to be taken; let me just give two examples. The obvious one is sanctions measures, where once a package of sanctions has been agreed, it needs to be implemented as rapidly as possible, otherwise the people concerned take action, particularly in regard to moving their assets, so that the sanctions have much less impact. Secondly, there have been one or two occasions when there has been prolonged Brussels negotiation between countries about the renewal of a mandate for a CSDP mission and there has been a final deal that has been reached shortly before the expiry of the previous mandate. At that moment, I have to decide whether I take the risk that, by refusing to override, the current mandate expires and there is nothing to put in its place, and we are usually then dealing with some quite perilous parts of the world. Again, on at least one occasion I have refused to override because I felt that the EAS had not done a proper job, and they found an emergency measure to tide them over for a couple of weeks to let the Committee do its job. I think the Committee, in its turn, brought forward its discussion. In terms of how we deal with this, there are two things. First of all, I think we have to get better in Government at telling the Committees about forthcoming decisions. I am trying to do this both by making officials available more regularly to talk informally about what is likely to come up over forthcoming months, letters from Ministers, particularly pre-recess letters to explain the sort of Foreign Office business that might be coming up on the agenda during the recess. That also then gives the Committee an opportunity to flag up any areas of concern to us that we may not have taken into account. The second point and the big problem is the recess. The blunt truth is the parliamentary timetable and the Brussels timetables do not always match up. We have formally asked Brussels whether they will disregard August, which is the biggest problem, and I am afraid we have had a clear answer, “No, sorry, we are not prepared to do that.” Most of our overrides, if you look at the detail, do result from decisions being taken during recess, and I think more often than not it is a sanctions decision during recess as well. So it may be the Committee would want to explore whether there is some sort of arrangement for sifting or Sub-Committee work during recess, because it has to be properly shared, I think, if we are going to get a solution.

Q25 Michael Connarty: I think we realise that the Minister does have an encyclopaedic knowledge of his brief. But these are really not matters of timetable and holiday. This is about the fact that CFSP uses a very large number of non-legislative decisions. We have flagged this up, as I say, in the last Parliament, in the last Government, in the last Committee. This is a process whereby the EU has not really thought that national Parliaments have any rights. That is why they use a non-legislative procedure, and 68 overrides in the last year is a lot of overrides, and it is because of the way they proceed with CFSP business. The memorandum from Dr Aerial Huff and Dr Julie Smith of the University of Cambridge commented, “The current scrutiny system is particularly poorly equipped to scrutinise non-legislative policy areas, such as the Common Foreign and Security Policy and the Common Security and Defence Policy.” It has been suggested that there should be some other way of dealing with this. One, which I say I hope the Committee will continue to oppose, is a blanket waiver for these things. But what does the Minister think should be the way this is dealt with? All of the talk before is all very well, but if we do not have a system whereby non-legislative policy areas have a process of scrutiny, we are always going to be told after the event what the Government has
done and not asked what we think the Government should do.

**David Lidington:** I think there are two separate but related difficulties that we are facing here. One is over what I have just described: the difficulties concerned with recess and with sometimes some very fast-moving and urgent foreign policy changes, especially on sanctions or sometimes the expiry of mandates. But there is a broader question, I think, which Mr Connarty is alluding to, which is 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 rather than in formal Decisions, with a capital “D”, by the Council, which are caught by the Scrutiny Reserve Resolution. I acknowledge that this is a problem, and it is 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. With the concern about the position where there is any risk of people thinking that we have conceded that a particular CFSP mandate creep, I very much do not want us to be in the position where 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. With the concern about the position where there is any risk of people thinking that we have conceded that a particular CFSP proposal might have legislative consequences when we do not think that those are justified. I am very willing to explore any way in which we can allow for proper debate and scrutiny of Foreign and Security Policy measures though.

**Q26 Michael Connarty:** I think, Minister, you have made my preamble for me; the reality is that, without discussion with national Parliaments, the strategies and action plans, which have massively far-reaching implications and long-term results for both the resources committed by the EU and also the commitment of our own Government resources, have basically been kept away from the scrutiny process. Given that national Parliaments have a fixed and acknowledged role in scrutinising the Common Foreign and Security Policy—and some of us would argue the Common Security and Defence Policy should have been held on to as tightly as well, but it was resisted by the last Government, and defence is something that is very much a national scrutiny, it is not better that all of these things are properly scrutinised, and strategies and action plans with long-term impact on our citizens and our electorates come to this Committee for scrutiny?

**David Lidington:** I propose instead of “ad hoc” to say “on the merits” of each case. I am quite prepared to concede on Central Asia there were some slip-ups that meant we did not tell the Committee some of the details that needed to be told to this Committee, and I wrote to the Chairman in the summer to apologise for that. But the key thing was that what had originally been announced as a review leading to a new strategy for Central Asia strategy, The Commission properly describes ENP Action Plans as “central”. They are no longer deposited for prior scrutiny and, as I said before, a lot of European and UK taxpayers’ money is involved in these strategies, so it does not seem to be good enough to have an ad hoc policy. If we have a scrutiny role, and I think national Parliaments do have a scrutiny role, unless it is removed formally by this Government—which I have not noticed happening, because ad hoc-ery seems to suit the Government—is it not better that all of these things are properly treated, and strategies and action plans with long-term impact on our citizens and our electorates come to this Committee for scrutiny?

**David Lidington:** I have no problem with the principle. Wherever an action plan or a strategy document has been agreed by one of those measures that is caught by the scrutiny process, like a Council decision or a Commission communication to the Council, we submit it to scrutiny. This year, we did that on the Enlargement Strategy—that was a communication from the Commission to the Council and the Parliament—on the joint communication from EAS and the Commission to the Council on the EU’s Counter-Terrorism Action Plan for the Horn of Africa and Yemen; and the joint communication to the EP and the Council about Human Rights and Democracy at the Heart of EU External Action, which is shortened to the EU Human Rights Strategy. 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. So what we have done is consider them on an ad hoc basis, and where there has not been a clear reason not to deposit, we have sent them to the Committee, usually with a covering letter, because they are not formally caught by the Scrutiny Reserve Resolution. Now, what that does mean, of course, is in those circumstances the Committee does not have the power to refer it for a debate.

**Q27 Michael Connarty:** Minister, this is where we differ. The reality is there is supposed to be a role for national Parliaments. Other national Parliaments scrutinise these things, and as you have said, it is not a term that falls lightly from your lips, “ad hoc”. You are not an ad hoc kind of person. You are a very precise kind of person, so some of the Government must find that ad hoc-ery is a good way of avoiding scrutiny. Look at examples. Overarching strategy deposited for scrutiny includes, for example, the recent EU Caribbean Strategy, but not the Central Asia strategy. The Commission properly describes ENP Action Plans as “central”. They are no longer deposited for prior scrutiny and, as I said before, a lot of European and UK taxpayers’ money is involved in these strategies, so it does not seem to be good enough to have an ad hoc policy. If we have a scrutiny role, and I think national Parliaments do have a scrutiny role, unless it is removed formally by this Government—which I have not noticed happening, because ad hoc-ery seems to suit the Government—is it not better that all of these things are properly treated, and strategies and action plans with long-term impact on our citizens and our electorates come to this Committee for scrutiny?
the stuff that is genuinely of political significance and not matters that are more routine working documents?

Q28 Michael Connarty: I will treat it as a glass half full rather than a glass half empty, but can I take from that that the idea that has been mooted—that there should be a general waiver for all of these and none of them should come—is now dead and the Minister will not bring it back as the policy of the Government? Are we going to talk and negotiate around the question of what is valid and necessary to be seen rather than just the idea that there would be a blanket waiver for all these documents?

David Lidington: I always want to find ways in which to ensure that significant European documents are properly scrutinised and, if necessary, debated in Parliament, so I will not give a categoric response on the point about the general waiver today. I will take that away and look at it in the light of Mr Connarty’s comments, but my intention would be to provide as much scope for proper consideration by Parliament as is possible.

Michael Connarty: Thank you.

Chair: Thank you very much. We are moving on to UKREP.

Q29 Kelvin Hopkins: Minister, is there scope to increase the democratic accountability of the work of UKREP? I have one or two additional thoughts after your preliminary answer.

David Lidington: Okay. Yes. UKREP is a unique Foreign Office post, but with officials from right across Whitehall. The Permanent Representative met the Chair of this Committee in late 2011 and Lord Boswell, Chair of the Lords Committee, this summer, and the intention is that those meetings should be conducted on a regular basis. As a matter of policy the FCO is encouraging all our ambassadors, including the Permanent Representative, to meet parliamentarians more frequently, whether those happen to be Committee members or members of all-party groups. We have had such briefings very recently with our ambassadors to both Paris and Madrid, and though the number of parliamentarians who attended was quite low, they were people who had a genuine interest in those particular countries.

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.

Chair: We may need to look at the question of how the A and B points system operates, because it does give an enormous amount of power to UKREP. I am beginning to hear from some Ministers that, quite frankly, they find that they are upstaged already by decisions that have been taken. I heard of one only in the last couple of days, and the Minister said, “I went thinking that I was going to participate, but it had already been settled.” It may be anecdotal, but I think we may need to look into that a bit more.

Kelvin Hopkins: You have made the point effectively that it is a very, very powerful position, very influential and there permanently. I met the former Chief Permanent Representative, and he had very definite views about the European Union. He was not the traditional sort of civil servant who you cannot pin down politically: you could with this particular Representative, I have to say. I have not cleared this with the Chairman, but it seems to me that it might be an idea to have a pre-appointment hearing with this Committee.

Chair: I think we may call Sir Jon Cunliffe to come and see us. I think that might be a good idea.

Q30 Chris Kelly: Minister, should the explanatory notes accompanying Bills and information accompanying Statutory Instruments include more detailed information specifying what provisions arise from European Union obligations, both to help members of the public who take an interest in these matters and, indeed, parliamentarians themselves?

David Lidington: That is a very interesting point. I just want to take a moment because I want to think this out. This is something that had not come up in my brief.

Q31 Chair: Can I help you, before you do? When I was on the Statutory Instruments Committee a long time ago, the 1980s, we did specify in the list of Statutory Instruments what derived from European legislation.

David Lidington: I am trying to think, Chairman, whether I can imagine any good reason not to give that information, and I struggle to find such reasons. It seems to me that there is no advantage to concealing the fact that something may be as a consequence of EU obligations, so we might as well make a virtue of it.

Q32 Chris Kelly: The only downside possibly is the use of a little bit more paper.

David Lidington: Yes, but we are all becoming paperless and going online these days, aren’t we?

Q33 Jacob Rees-Mogg: I am not sure about that, Minister. The next question you began to address very early on in your answers. It is the question of what happens after something has been introduced. So you have the Directive, and it is enforced; what scrutiny then is there on how things operate in fact, and what role should Parliament play in scrutinising things once Parliament has, essentially, finished with them and approved them?

David Lidington: In my view, there is far too little of such examination. What happens is that Government will keep an eye on implementation. Obviously there are Government procedures for the timing of implementation, which we have reviewed and changed as part of our effort to reduce regulatory burdens more generally, but once a measure has been put into effect, then as with purely domestic legislation, I think a lot depends upon the extent to which affected individuals and organisations make a
fuss about the problems that it may be causing, so I think there is a greater role that Parliament could play. My own view has been that this is something that again, we might look to departamental Select Committees to do. It would seem to me no bad thing if, after a reasonable period of time, a parliamentary committee were to convene an inquiry and call evidence to examine how a particular measure derived from the European Union was working out in practice: had it worked as its authors had intended or were there some unexpected consequences from it?

Q34 Jacob Rees-Mogg: Do you think there is any value in routine sunset clauses so that issues have to be reconsidered and re-approved at some future date, or does that simply make life unbearably bureaucratic?

David Lidington: In the context of European legislation, we would have to be careful that, if we did adopt routine sunset clauses, we did not put ourselves at risk of infraction proceedings because we had allowed a gap between the expiry of one measure and the enactment of a successor. Subject to that, I have always had a leaning towards sunset clauses as quite a useful measure. Mr Rees-Mogg may be interested in what I recall from my doctoral researches almost 30 years ago—that in the 16th century, such sunset clauses in statutes were quite routine for a lot of legislation.

Chair: A very interesting observation, given the fact that you obviously studied this matter in the days when Parliament was struggling to obtain its democracy.

Q35 Mr Clappison: Minister, your memorandum suggests that options for streamlining existing processes from Explanatory Memoranda should be examined. Have you got any specific proposals for this and which classes of document this should apply to?

David Lidington: I think again this is a matter of trying to reach agreement on some kind of qualitative test, because I think it is very hard to find a legislative definition. Clearly, a directive or a regulation can be very far-reaching in its impact or it can be mundane. What I would like to achieve would be some kind of triage system, where the Government and Parliament could agree to distinguish between matters that were important and those that were not, and the streamlining would apply to those of a more routine nature.

Q36 Mr Clappison: Given the number of staff across the Civil Service who have to make decisions on this, do you think there should be clear, simple rules that everybody can understand?

David Lidington: I think it is very important that we do that. We continue always to keep a close watch on the guidance that we are giving to officials. When mistakes are made in Government, we do make an effort to change that guidance if we think that will put it right. We have done that in response to the mess up over the EUSR on Central Asia earlier this year, where we have changed the guidance to officials as a consequence of that to try to avoid that problem happening again.

Q37 Mr Clappison: Your memorandum comments that Explanatory Memoranda are not available on Parliament’s website. Do you think that the current arrangement of publication on the Cabinet Office website works well?

David Lidington: We have had some problems with the Government website. I certainly believe they ought to be available on the Government website. What happened is that there were some problems when the Cabinet Office’s IT systems were changed earlier on this year, and with that we had the fact that the previous IT platform for the Explanatory Memoranda website was no longer supported, so no new EMs have gone on since March. What I can say is that those problems have been overcome. The site is due to be re-launched early in November, and the old website will be archived early in 2013. It is still the case that anybody going to the old website would have been able to ask for a copy of an Explanatory Memorandum directly from the Cabinet Office, but I accept that is not ideal, though people will still be able to do that in the future. The new site is going to be capable of Google indexing, so people will be able to subscribe to alerts for memoranda that match topics in which they are interested. The website will now include copies of ministerial letters to the Committees, as well as copies of the EU documents to which the Explanatory Memoranda refer.

Q38 Mr Clappison: As well as what you have just said, would the Government also consider supporting, with resources if necessary, better access to Government information through the Parliament’s website?

David Lidington: I would certainly be willing to take that point back to my ministerial colleagues. I think Mr Clappison will understand why I am not going to give a promise about resources.

Q39 Chair: On the question of the Interim Report on Economic and Monetary Union, you may recall that I myself and a number of others were extremely exercised by the fact that it was clear that this was a definition of a depositable document. I remember having a discussion with the Minister for Cities, the Rt Hon Greg Clark, from Cyprus, which got entangled with the Prime Minister’s position with respect to the position he might adopt at the oncoming European Council. It was resolved satisfactorily, and I am sure you were involved in that eventually, probably from the beginning, but the reality is that we did arrive at a proper solution, and the document was ultimately deposited. Could I simply urge you to make sure that this does not happen again? Where it is clearly a matter for Standing Orders—and this was—whatever the prevailing wind may be from Downing Street, we must ensure that a document that ought to be deposited is.

David Lidington: I take your point seriously, Chairman.

Chair: Thank you very much indeed. We are now moving to what I think is, in many respects, a rather
important aspect of all this. Having locked ourselves into proper discussions about the technicalities and Standing, Orders and Explanatory Memoranda, there is an issue here that causes a lot of people a great deal of concern, which is the engagement with the people at large and public debate, the question of interest groups and the question of the media. I would be grateful if Penny Mordaunt would be kind enough to ask the next question on that very important interactive question. What does it really mean and how do people know what is really going on?

Q40 Penny Mordaunt: My first question is about what the Government is doing now to develop the level of engagement with interest groups of all descriptions and, as part of that, what part will the Review of the Balance of Competences play in that process?

David Lidington: As I said earlier, even ahead of the Review of the Balance of Competences we have been making very deliberate efforts to become more involved upstream with the EU institutions over the development of policy, and this, rightly, has to involve a very early understanding of the concerns of British business and other affected organisations. Certainly when I have talked to businesses and their representative bodies, they very much welcome that focus, because they have said that a number of other countries have been operating in this fashion for some while already.

I think the Review of the Balance of Competences is very important in that it will give us an opportunity to engage much more with people outside the political bubble and on the basis of hard evidence and information. What is going to happen is that for each of the areas of policy to be examined, the lead Government Department will be required to take an initiative to call for evidence and so reach out to a range of groups: individual companies, business organisations, think-tanks, pressure groups, and civil society organisations. They will request that they present evidence, first of all, as to how the United Kingdom’s membership of the European Union and the current balance of competences have affected what they do, to say where the advantages and disadvantages lie. For example, a business might say that they have benefited in certain ways from the single market, but that there are particular regulations or particular judgments from the European Court of Justice that have worked to their disadvantage. They will then be invited to say whether they think more EU-level competence would help them or whether reduced EU-level competence would be of benefit to them, and to put forward any other suggestions that they have. Those submissions from outside bodies will be examined by the lead and associated Government Departments. They will then form the basis of a report that will be drafted by officials. As the Foreign Secretary has made clear, this is not an exercise that will end in policy recommendations, so I expect those reports to have something of the character of a good cross-party Select Committee report. The aim will be to give a fair representation of the evidence, including the weight of evidence, on all sides of an argument. The report will be drafted by officials, it will then go to a small ministerial group, which I shall chair, and then to the European Affairs Committee of the Cabinet. Every six months, we shall publish online the reports of those areas of policy that have been examined in the previous six months together, as far as possible, with links or online publication of the evidence itself so that people can go to the quary.

I had a meeting earlier today at the Foreign Office with a number of business groups and think-tanks whose interests will range across a pretty wide spectrum of areas of policy. We are discussing with them at the start how they want to take part in this exercise. We had some criticism from business over the Red Tape Challenge for sending them questionnaires every couple of weeks, so we are saying to business and the other groups, “If you have interest in a whole range of policy areas, would you rather that you addressed this strategically or would you prefer that we deal with you separately on each of these areas of policy?” We will try to make it as straightforward as possible for those groups to say what they want to say and present their evidence.

Q41 Penny Mordaunt: Could I also ask what additional things Government could be doing that it is currently not planning on doing, and what role do you think Parliament and the media might play in improving the quality of public debate on Europe? One of the interesting observations over the last few days is what is affecting the public debate. People are talking about particular policies. For example, the debate this afternoon: I think a lot of people would be interested in that issue, but as a constituency MP I have not had a lot of letters on that, although I get an enormous number of letters on something like a referendum. It would be interesting to get your observations on that and what other things all the players in this could be doing to improve the public debate.

David Lidington: As far as the media is concerned, this is not something that the Government can really do much about. Editors will make their own decisions. It is a lament, I think, of politicians, whether inside or outside of Government, that less and less reporting space is given over to coverage of what happens in Parliament or what we might describe as weighty political issues. Now, we may regret that, but I do not think the editors who take those decisions are being unfair in reflecting the interests of their readers, viewers or listeners. So I think we need to look for ways in which to debate these questions within the context of a public opinion that is more interested, frankly, in looking at lifestyle issues. Some of the issues that happen with European policy—for example, the idea of a single digital market with a common framework of consumer protection for online sales across Europe—I think would have a cut through to many people. But I think also, if we could find a way for Parliament to say more and publish more about European Union matters at a strategic level and also looking at post-implementation work that might be of greater interest. I do not in any way want to denigrate the document-based work that this
Committee does, but I am conscious that the language of the Explanatory Memoranda that I sign is often very technical. It is not frequently the sort of matter that is going to grab the attention of a member of the public or even a reporter, so I think it is that more high-level examination that might provide the raised public interest.

Q42 Chair: Could I just come in on that? It is a matter that I think many people are deeply concerned about, certainly judging from opinion polls and the interaction, for example, with the media. I am in many ways excluding the press in this context, because I do not think anyone can seriously say that either the more red top press, on the one hand, or, for that matter, the serious press or the other kind of press on the other, lacks a lot of information on European matters. But when you come to the radio and television and, I think, in particular, the BBC, there is a very woeful lack of interest in the issues you have just mentioned, the big strategic issues. For example, this morning the headlines were all about the issue of Michael Heseltine’s growth plan. Anyone who knows anything about the real reasons why all this is going on about the lack of growth might want to look at the debate that is taking place this afternoon, which is almost entirely focussed on whether the Government is going to be in difficulties over the vote, not the substantial issues that are raised about whether or not the Multiannual Financial Framework is something that the British Government should accept.

I think the issue of impartiality is another question: who they choose to go on programmes; who they choose not to go on programmes; and the manner in which the BBC conducts itself under its charter and even its guidelines with respect to the question of the European Issue. We had a report recently that indicated that the European Scrutiny Committee in terms of responses was, by comparison with other Committees, relatively static in the number of people who are taking an interest in its public sessions and, for that matter, its reports. I think that there is a really serious question here for the BBC to have to address, and I would be very interested to hear an answer. Penny Mordaunt has a question to ask on that as well.

Q43 Penny Mordaunt: I just wanted to raise the point that we know from our own constituencies that, whether we are trying to get members of the public to respond to consultation by the local hospital or whether it is trying to get support for a campaign we might be doing as a Member of Parliament here, people believing that their actions will result in the outcome they want is an important part of getting people engaged. When you meet people who do not vote, say, in general elections, you quite often get the answer, “You are all the same; it does not matter.” I certainly think that part of the problem about engagement on European issues is that the public are sceptical as to the impact that we can necessarily have: we are not playing on the same level playing field; that we might obey the rules but when we kick up a fuss about something, it is not listened to, and carries on anyway—that sort of attitude. Do you think that is part of the reason why we perhaps do not get the level of engagement on European issues that we do on others?

David Lidington: There is huge public disaffection with the European Union in this country, and not exclusively in this country either, for all the reasons the Foreign Secretary spelled out in his Berlin speech the other day. That is not something that can be put right simply by changes to the process in the House of Commons. One is then into serious matters to do with how national Parliaments can have a greater voice at European level, but I think it is more than that. I think people find it hard to see a relationship between decisions that take place at European level and their everyday lives. I hope that the Review of the Balance of Competences does start to attract public interest. I would expect there to be some powerful pieces of evidence presented saying that there are benefits and others saying that there is harm done by the current level of EU competence in the treaties. But if businesses and other groups respond in the way I hope they do, that might make more concrete and real some of the European issues that we debate here. Just going back to what the Chairman said, I think there is a difference between television and radio. I think radio on European matters, as on other political subjects, does sometimes give time for rational argument and contrasting views to be heard, whereas TV really does trade in sound bites. If you are being interviewed on television, it is very rare that you get the opportunity for more than a few seconds.

Chair: I think we have covered a lot of the territory, Minister. We are grateful to you for coming and I will bring the proceedings to a close. Thank you very much.
Wednesday 28 November 2012

Members present:
Mr James Clappison
Michael Connarty
Nia Griffith
Chris Heaton-Harris
Kelvin Hopkins

Mr William Cash (Chair)
Chris Kelly
Stephen Phillips
Jacob Rees-Mogg
Henry Smith

Examination of Witnesses


Q44 Chair: Welcome to this afternoon’s session. It is good to see you, Minister. I will start with the first question. The Minister for Europe’s ministerial written statement of 20 January 2011, with which you are of course familiar, promised a significant strengthening of Parliament’s oversight of EU justice and home affairs measures and established a code of conduct for the decisions it makes in Brussels. How influential are the views of Parliament in determining whether or not to opt into a particular EU justice and home affairs measure, and can you cite an example where concerns raised by this Committee in its weekly report, or by members in European Committee or Floor debates here or in the Lords, have caused the Government to change its mind and its initial position on an opt-in?

James Brokenshire: Thank you very much, Mr Chairman. Before I respond directly, perhaps I could ask my two officials to introduce themselves and then I will start.


Fiona Fraser: I am Fiona Fraser, I am the head of the EU and International team in the Legal Adviser’s branch in the Home Office.

James Brokenshire: First, can I thank you and thank the Committee for the interest that you have taken in relation to this important issue of scrutiny. We do take it extremely seriously, and the Government has stepped up the level of scrutiny attached to justice and home affairs measures, as set out in the statement of the Europe Minister at the beginning of last year. The scrutiny is important because it does allow Parliament, whether through the two specific Lidington debates we have held or, indeed, the way in which your Committee has sought to refer opt-in decisions to the Standing Committee, to add further rigour and consideration to each of these measures. I know for example that the outcome from the debate we had on Eurodac in September certainly did reflect in the decisions that were finally taken. I hope the Committee will see that the approach the Government finalised did reflect the views of this Committee in that respect. We are certainly stepping up our scrutiny. Can we do more or should we be doing better? I think there is certainly scope for improvement.

When I look at the two full Lidington-style debates that we held on the Floor of the House, they did not perform as well as I would have liked. I hope the Committee will have noted that I did put that view very clearly when I spoke to the second of those debates in the House. In part that was occasioned by the fact that a formal cross-Government decision on whether or not to opt-in or opt-out was only taken around 48 hours before the debate. I do not think that aided the scrutiny in the two cases for which we have had the specific Lidington debates thus far. Certainly we are putting in measures and steps to fulfill your wishes on having a clear Government decision at least a week before those debates, so that there is time for preparation and proper consideration. That is something that I do believe in very strongly.

Q45 Chair: As you know, we were pretty angry about that, but you acknowledged it and we are grateful for the fact that you are now cognizant of the fact that this is something that should not be repeated.

James Brokenshire: Absolutely. For me as a Minister, I really do believe in scrutiny of these measures and it was not as I would have wished it to have been. Subsequent to that debate, I had meetings with ministerial colleagues—the Minister for Europe and also with those in the Ministry of Justice. There is a code of practice that is being finalised to underline that, if there is an issue that is likely to be significant and therefore likely to trigger a Lidington-style debate, it should be flagged up earlier so that the timelines in relation to consideration across Government are brought that much further forward. This will ensure it provides that ability to give a clear view in advance of the debate, rather than leaving it until the point when the decision would have to be taken, which would be slightly later. I think it is fair to say that in respect of each of the opt-in/opt-out decisions that have been taken, there has been the ability to have each of those debates, whether in Standing Committee or on the Floor of the House, before the time period has elapsed in terms of the exercise of the opt-in or the opt-out.

Q46 Michael Connarty: Welcome, Minister. The actual memorandum talking about how we should deal with opt-ins says, “Debates in Committee or on the Floor serve to crystallise and highlight Parliament’s concerns on important issues.” It goes on to say, “The Government is keen to encourage as many parliamentarians as possible to participate in such debates and welcomes the fact that the meetings of the
European Committees are open to all. "It then goes on to note: "The Government notes that some debates have been sparsely attended or have concluded very quickly." I will give you some facts. On four occasions no other Members other than those appointed to serve on the Committee attended. On seven occasions just one Member attended who is not appointed to the Committee. On one occasion there were actually two additional Members who attended.

James Brokenshire: You rightly point out some of the challenges with the Committee debates. Mr Connarty, you and I have attended a number of those that have finished early and where the large bulk of the time that has been used even within that time has been opening statements and statements from the two Front Benches. I do look at that and think about whether that is going far enough. I know that in the evidence session that the Minister for Europe attended, Mr Cash highlighted the previous regime, where there were permanent Members who attended and gave that additional level of expertise and rigour. I fully recognise that a lot of what we do is very technical. It is about those issues of whether there is a specific legal base or not, and the relevance and significance of that to whether or not, for example, an opt-in has been crystallised.

I do therefore welcome the detailed consideration this Committee is giving to this issue. I also welcome how we are able to draw upon expertise from, for example, the Home Affairs Committee or the Justice Committee, so that there is greater read-across of expertise that is able to better inform the consideration not only of the technical EU aspects of this, but also of the broader policy issues that some of the other Select Committees are able to draw upon as well.

Q47 Michael Connarty: Just on that, it is worth putting on record that this is not a matter of concern just to the present Government. It was, in fact, following the 2005 general election that Sessional Orders were moved aside, and the requirement of Standing Order No. 119 for permanent membership of the then three Committees was set aside. There used to be two and, after some debate they extended those to three, because it was said that the remits of the two were far too large, so we needed three. This then persisted and the Sessional Orders were each removed until ad hoc membership was made permanent from 1 January 2009. Basically, we are in a situation where what was a trial was found to be suitable for someone's interest. Clearly, from our point of view, we now do not often get people from the subject Committees attending. Even when they are named, sometimes there is nobody from subject Committees in attendance. Do you think that the European Committees would be more effective with a permanent membership, which we used to have? That develops Members' facilities and familiarity with the subject matter, particularly in complex fields such as your own—justice and home affairs. It would mean that, rather than calling people from outside and hoping they turn up, people in the Committees themselves would have expertise in the EU dimension.

James Brokenshire: One of the challenges is, notwithstanding the composition, to see that members then participate. My understanding of the previous regime with permanent members was that attendance was poor. That actually then led to the regime that we are currently working under. It is a question of whether there is enthusiasm for members to be nominated on that basis. Equally, the whole concept of things like rapporteurs on specific subject matters to inform the Committee is something that I know has been floated—to have individual members of this Committee who may volunteer to take on a particular role for a particular subject matter, whether that be justice and home affairs or otherwise. It is a question of examining this range of options to see what is likely to encourage the most participation, so that we do get robust and detailed scrutiny and draw in expertise from wherever it can be drawn.

Michael Connarty: Just to put it on record before we move on, I volunteered to go on the European Scrutiny Committee’s sub-committees in 1994, and I certainly found that the attendance was at least consistent, with people who wanted to gather expertise on European matters. You had three, four or five people who attended on a regular basis, of the named individuals. They became quite expert in the fields of Committee A, B or C. It is that expertise that has been lost. We did not necessarily always have all 13 members attending, but those who were interested in building expertise could do so. This is now missing.

Q48 Chair: This is very important. One might encapsulate it by paraphrasing Much Ado About Nothing: the fault lies not in ourselves, but in our Standing Orders. We have to try to get this right so that we make sure we have full engagement with people who have enough expertise. Would you agree with that generally?

James Brokenshire: I do. We want to ensure that we get the most from those sessions, so that Parliament is able to ask me, as a Minister, questions and for us to provide information into those sessions, so that there is good and detailed consideration of the dossiers and papers we are seeing from Brussels. I do not want to see some sort of cursory ticking the box and saying that because we have had the Committee, that has satisfied the scrutiny. It may do on one level, but it is still a question of how we can ensure that there is robust challenge. That relies on having expertise in a number of the process and procedural issues that lie behind EU law, as well as the subject matter itself. The challenge is how you are best able—through the Standing Orders and through sharing knowledge and understanding through the membership of the House—to garner that ability to deliver on that. I fully recognise that that remains a challenge.
Q49 Kelvin Hopkins: I was a permanent member of European Committee B from 1997 to 2005 until the European Committees were abolished as permanent membership committees. In the early years, they were well attended. They typically took the whole two and a half hours allocated to them and often it was a problem getting in to speak. Things changed after that. I am wondering if both the previous Government and this Government's establishment of vast numbers of Parliamentary Private Secretaries as a route to advancement has made a difference. People perhaps now see that as being more important than sitting on even Select Committees, let alone European Committees.

James Brokenshire: It is funny. In this Parliament we have seen what I would not describe as a renaissance, but certainly Select Committees taking an increasing role. That is really good and healthy to see for both scrutiny and our democracy, so I do not necessarily see it in that way. I think it is perhaps more about the level of knowledge that Members have across Parliament on these issues, perhaps because there has been that reduced engagement over time. It is a question of Parliament together underlining that these issues are important. That is why we have made the statements we have made about stepping up scrutiny, about the rigour of that process, about reporting back and about the annual statements that are given in respect of EU matters. I very much want to see this aspect of scrutiny being stepped up in the way that other aspects of scrutiny have been.

Q50 Chair: Basically, we seem to be getting towards some form of agreement that it would be a very good thing, given the amount of attention that is given to the European question through the press and the media generally now. The more people that engage in the subject in Parliament through this sort of process and get the expertise you have referred to by being in on those Committee hearings, the better it is for the country at large because they will be better informed.

James Brokenshire: Having more information and being better informed is absolutely right. When we look at the work around the Review of the Balance of Competences, it is about providing information, evidence and analysis to inform evidentially the debate and the discussions around these very significant issues. We should look at ways in Parliament of stepping up that knowledge. I fully accept these areas can be quite dry at times, in terms of whether it is a Title V legal base, whether it is a Schengen-building measure, which part of the acquis it is, or whether it is an issue that we are participating in. These are quite technical issues for those who do take an interest in this and have been involved, and if you are not that engaged, it can seem quite imperceptible: “What does this actually mean?” There is a challenge of trying to decode some of this to explain it in simple terms so that we can more broadly engage in the debate around these very important issues.

Q51 Chair: They are important because they do actually crop up continuously in your field. What goes wrong—if it goes wrong—in our relationship with the European Union crops up from time to time in the press.

James Brokenshire: When we have the different measures and the different dossiers that come forward under the post-Lisbon arrangements, where we have an opt-in that may be triggered, or on a Schengen measure an opt-out, some of these issues do require detailed consideration. That is why, through the Lidington-style debates, we wanted to take this to the Floor of the House rather than simply having it in Committee. That is not to underplay the work of the Committee: it can and does do extremely important work. It is to give a greater showing of the decisions that come through from Brussels and from the specific dossiers that are published, because they are important.

Q52 Stephen Phillips: I just wanted to return to the Lidington debates, if we may, for a moment. You referred earlier in your evidence to the necessity for there to be robust scrutiny. Of course, we have the Lidington debates, which are supposed to give rise, in certain circumstances, to that robust scrutiny. We have had two so far and they were at best highly unsatisfactory for reasons of which you are aware.

You wrote to us last June and you referred to a number of unforeseen factors that gave rise to timing problems on both occasions. What were those factors and how often, if at all, do you expect them to recur in the future?

James Brokenshire: In respect of both of the debates, as I have already referred to, a final formal decision cross-Government only came to fruition around 48 hours before.

Q53 Stephen Phillips: I do not want to interrupt you, Minister, but that is a statement of the problem. My question is a different one: why did that happen?

James Brokenshire: I understand, Mr Phillips. I think the Minister for Europe indicated this when he gave evidence to you. It is not simply the Home Office’s view, because we have to get collective agreement across Government, and sometimes there are Coalition sensitivities that need to be worked through to arrive at that outcome, so there are challenges in establishing a cross-governmental position. First, there are the timing issues, which I have spoken about. Government Departments have not been responding early enough to the write-rounds that go on to seek the views of different Departments, and the significance of there being a Lidington debate has not been appreciated. This is why the time lines needed to be brought forward, and that is something we are actively addressing through the new code of practice that will be adopted. That will be followed through by the different scrutiny co-ordinators who have responsibility in each of the Departments, so that there is a good understanding. Certainly the Home Office is doing its bit with other Government Departments to explain this process and procedure so that there is better recognition of the need to come to views early. If there are different views on a particular measure, they will be escalated quickly so that resolution can be reached.
Q54 Stephen Phillips: That is quite a long answer, for which I am grateful. Let’s just go back to the Coalition sensitivities. Is part of the answer that the Lidington debate regime does not work well when there is a Coalition Government?

James Brokenshire: In any Government of whatever hue there will always be differences of view. Obviously we do have a Coalition, and that means we have two parties together, so there are a range of different views that can occur. There are challenges, and I would not shy away from that. The question is how to get the process right so that we are able to resolve those issues quickly and Parliament is able to have a meaningful, proper and robust debate over the individual measures.

Q55 Stephen Phillips: When is the code of practice going to be finalised?

James Brokenshire: The code of practice is literally in its final stages. I have a draft, which is about to be signed off and circulated. I would certainly anticipate that that will be in place before the end of the year.

Q56 Stephen Phillips: Will a copy be provided to the Committee so that we know what it says?

James Brokenshire: It is an internal Government document.

Stephen Phillips: I am aware of that.

James Brokenshire: It obviously informs consideration across Government, and I will certainly take advice on what would be normal in respect of those documents. If it is practice that documents of that kind should be shared, then we will share them.

Q57 Stephen Phillips: Finally, you will know that the former Parliamentary Under-Secretary at the Ministry of Justice told us that in future it would be desirable if we got at least a week’s notice of the Government’s opt-in position. Are you in a position to give us an undertaking that that will always happen in the future?

James Brokenshire: I agree that there should be a week’s notice. We will do our absolute utmost to make sure that that commitment is adhered to.

Q58 Stephen Phillips: Let me try again. Are you in a position to give me an undertaking that that will always happen?

James Brokenshire: On home affairs issues, because they touch on a number of different Departments, then I want to see the full week being given. It is difficult for me to be absolutely categorical with you, Mr Phillips. I am not trying to circumvent your question. I am trying to highlight that sometimes there are unforeseen circumstances that crop up, but you have my assurance that we will be doing our utmost to ensure that that week’s notice is given.

Q59 Chair: We will give you our assurance that we will get very cross if in fact that does not happen.

James Brokenshire: I entirely respect that. It is right that this Committee should do so because, again, it is about the scrutiny being applied, and we want to ensure that there is good, robust and clear scrutiny.

Q60 Chair: I have one last observation on what Mr Phillips was saying regarding the Coalition. Would you regard it on occasions as being more of a coalescence than a coalition?

James Brokenshire: No, it is certainly a Coalition. We do have good and robust debate from time to time, but that produces collective agreement with which we are then able to move forward.

Q61 Mr Clappison: I am afraid I have to come to a subject that you have already described as dry. That is Title V: you gave it quite a good build up. We have noticed that an increasing number of Explanatory Memoranda in policy areas covered by Government Departments including the Home Office and Ministry of Justice assert that the Title V opt-in may apply even though the measure in question does not actually cite a Title V legal base. Could we be given assurance that the Departments will look more carefully at this and give us better information?

James Brokenshire: It is where an issue touches upon justice and home affairs that we will always seek to assert the Title V legal base, such that our opt-in right is assured. Sometimes there are, as you will be well aware, Mr Clappison, differences of view between us and the Commission as to what the right legal base should be for a particular measure. Indeed, your Committee has supported the Government in a number of cases where we have sought to embark on that challenge with the Commission’s Legal Services. Where we see that there is a justice and home affairs element, we will always seek to assert a Title V where appropriate.

Q62 Mr Clappison: Do you agree that where an Explanatory Memorandum states that the UK’s opt-in might apply, the full Lidington–Ashton commitment should be applied?

James Brokenshire: When we have a matter that we assert has a Title V legal base, I think it is appropriate for us to maintain the same rigour regarding the issues over the reporting of that, the statements that are contained within the Ashton and Lidington requirements in respect of what appears in the annual reports, and the written ministerial statements or, at times, oral statements that are required. If we are asserting a Title V legal base in that environment, that should flow through in respect of the other commitments that we give.

Q63 Mr Clappison: Where there appears to be doubt as to whether the opt-in applies, do you agree that Departments should seek to reach a view within the initial eight-week scrutiny period so that there is time for the Scrutiny Committee to recommend an opt-in debate?

James Brokenshire: I do—where that is possible. I appreciate that at times, Mr Clappison, these issues—and I can think of one or two examples—have come up late in the day, sometimes with other Government Departments that perhaps are not so familiar with the Title V legal base and the triggering of the opt-in. We are taking steps across Government to ensure that there is a good and better understanding of the Title
V legal base, such that we are able to assert our opt-in rights and, indeed, ensure that this Committee has the ability and, indeed, the inclination to take on more work in the justice and home affairs field?

Chair: One of the questions being brought up more frequently now is the greater involvement of departmental Select Committees.

Q64 Henry Smith: Minister, on that point, do you think that the departmental Select Committees have the ability and, indeed, the inclination to take on more work in the justice and home affairs field?

James Brokenshire: Obviously that is a question that I am sure you will have discussed with some of the Select Committee Chairs themselves. I certainly think that there is scope for this. The question is what the format for that is, given that each of those Select Committees already have full programmes of inquiries on specific subject matters. It is important that we do draw upon the expertise of those Committees. The question is working through how to do that appropriately, recognising the heavy workloads that the departmental Select Committees are already bearing.

Q65 Henry Smith: What do you think are some of the potential advantages or disadvantages of the departmental Select Committees taking on more of that justice and home affairs work?

James Brokenshire: It is a question of the way in which you do it. I have seen a suggestion that you could have a rapporteur or an individual who would sit, potentially, on each Committee or have some link in to both Committees to be able to draw upon that expertise. That obviously would not increase the resourcing or the pressure on the departmental Select Committee. We have seen from the Home Affairs Committee that different departmental Select Committees will take an interest in specific matters. For example, from the Home Affairs Committee’s perspective, they have taken an interest in Europol over a number of years. I think it is right and proper that they should do so in terms of the link with domestic policing, the fight against organised crime, and what Europol’s role may be in that regard. There is scope for some of that work is already taking place, but there is certainly scope for more to be done.

Q66 Chair: Within the House of Lords system there is a much broader approach to questions that arise of the kind you have just mentioned. Would you agree that it would be extremely difficult, given the volume of material, which can be as much as a couple of inches high on a given day, for every departmental Select Committee then to consider every single thing that comes through that is remotely important? Would you not agree it would be quite impossible?

James Brokenshire: That is an absolutely fair point, Mr Cash. There are two issues to consider here: firstly on the ability for departmental Select Committees to be able to assess that material, the concept has been touched upon of a rapporteur who may be able to facilitate that for this Committee or for a departmental Select Committee. It also touches upon the points of the Explanatory Memoranda themselves. There are a large number of them; there is a question of whether all of them are useful or appropriate and whether some of them could be put together in a shorter form, because less than half of those—around 42%—actually end up being considered in detail by the Committee. Therefore, the question is whether that is a good way of focusing in and whether it is possible, through discussions with the Clerks, to have effectively two levels of memoranda depending on the significance or importance of a particular measure, so that the Committee is better able to deploy and use resource appropriately. This ensures we get the right information to you, but if an issue is deemed to be not of such significance, a shorter form of memorandum may be provided.

Q67 Michael Connarty: I think the Minister should understand that we do that. We have three different types of papers that come here. We treat that similarly, but I cannot think of any way of shedding A briefs—the 42%—down to a smaller number. Somebody who takes this on takes it on fully, and the secret of doing any business in this Committee is to read all the papers.

James Brokenshire: I absolutely accept that, Mr Connarty. The question I am posing is that if half of them are then not referred to the Committee, is there scope in looking at the whole, macro number? If it is, for example, a Schengen-building measure that we do not participate in, the question is whether the format for that should be slightly shorter, given that it does not necessarily touch upon those direct scrutiny issues. It is more the form issue that I am touching upon, rather than suggesting that the Committee should not look at all of those papers. It should do. It is rather the form and format for that.

If we are touching on things like the agencies such as Europol, it may be that we would be interested in having a discussion with you on the papers that we receive that are not currently put forward with Explanatory Memoranda. If there is scope for that, without adding to the overall burden, we could look sensibly and cohesively at what would be useful to better inform consideration of those agencies as well as the other dossiers that come through.

Q68 Michael Connarty: I am sure the Minister is well-meaning in that, but remember that Parliament has been accused by the CBI of being asleep on the job when it comes to scrutinising European proposals. Since members of this Committee seem to be the only people doing so, do you think it might be useful if some of the other Select Committees actually engaged actively in taking seriously the legislation coming through? That might stop those kinds of accusations from the people who basically send us them.

James Brokenshire: I know the seriousness this Committee rightly attaches to this. On specific areas, some of the departmental Select Committees equally examine them. I am pleased to note in relation to the 2014 decision that Justice, Home Affairs and this Committee are working together around that, and that direct interest has been shown in that regard. There is certainly scope for greater engagement with the
Q69 Chair: Referring back, for a moment, to what Michael Connarty was saying regarding contributions made by outside bodies to our Select Committee, the CBI’s statement through Lord Digby Jones was quite extraordinary because, as I was able to demonstrate to him, the CBI has never given any evidence that we can identify to this Committee at any time. To suggest that we were somehow asleep on the job seemed rather absurd. Would you not agree that it would be helpful in your field if, as happens with some other Committees, the bodies that are concerned with matters within your remit also gave evidence to us more frequently so that we would hear what they had to say, as well as having our own views and those of departmental Select Committees?

James Brokenshire: Mr Chairman, if there are issues that you are seeing on unwillingness to participate in the scrutiny process, then I am certainly very happy to look at that, to take that away and see if there are further steps that we can take to inform the level of engagement and evidence that is provided to this Committee.

Chair: You have demonstrated an unerring prophecy in what you stated just now with regard to agencies, because Mr Kelvin Hopkins has some questions to ask about that.

Q70 Kelvin Hopkins: Minister, do you think there is scope for more formal parliamentary scrutiny of EU agencies active in the justice and home affairs field, such as Eurojust, Frontex and the European Asylum Support Office? If so, how do you envisage this working?

James Brokenshire: As I have already indicated, we are certainly open to considering the reports and information that we receive and whether there is a way in which we can report that into this Committee through some form of Explanatory Memorandum in a way that does not add to the Committee’s workload unmanageably. I know that we currently deposit Explanatory Memoranda on the Eurojust annual accounts and the budget. We have not been depositing Explanatory Memoranda on Eurojust itself, but we are open to considering and examining ways in which further Explanatory Memoranda may be submitted for consideration. This will be while exploring the approach I have already touched upon of looking at different forms of Explanatory Memoranda that are able to explain things in an easier way without necessarily overloading the workload with which you are already dealing.

Q71 Kelvin Hopkins: This Committee, a year or so ago, visited Poland and the headquarters of Frontex. It was very obvious to me that it is one area of the European Union that is under-resourced. On everything else they spend too much, but Frontex is under-resourced and does not have sufficient power. It is heavily constrained in what it can do and say, when, in fact, the borders of the European Union are not effectively protected even now, particularly the Turkey-Greece border. Is there not a role for Parliament and indeed Member State Governments to make sure we give stronger support to this?

James Brokenshire: That is interesting because it touches again on the balance between this Committee and the departmental Select Committees. I think I am right in saying that the Home Affairs Committee has conducted its own inquiries in relation to borders and that some members of the Home Affairs Committee have visited Greece and looked at the work of Frontex there. It perhaps again underlines the way in which scrutiny can be done and the co-ordination between the work of this Committee and departmental Select Committees to look at the broader work, including some of the agencies as well.

Q72 Kelvin Hopkins: What I am looking for is a Government to say, “Yes, we are going to get stuck in there and really make it work properly, and give Frontex and maybe some of the other bodies the strength to do the job they are designed for.”

James Brokenshire: Certainly we do contribute to and support the work of Frontex, as you will be well aware, Mr Hopkins, from some of the debates we have already had on this subject. I suppose the question is the role of the departmental Select Committees in this Committee in challenging, scrutinising and putting forward recommendations in that regard, and the best way to do that on a continuing basis.

Q73 Nia Griffith: Minister, the Lisbon Treaty envisages a new role for national Parliaments. It actually talks about evaluating the activities of Eurojust and scrutinising the activities of Europol. Would you make a distinction between those different activities—i.e. evaluating the activity of Eurojust and scrutinising the activity of Europol—and are there any particular ways in which you would see things developing further, building on what you have just said?

James Brokenshire: It is interesting whether, as you say, there is this distinction between evaluating and examining, I suppose you could argue that there are nuances between the two, but ultimately it is scrutiny of both of those organisations. I suppose it does come back to the point about the provision of Explanatory Memoranda on some of these issues, and we would be pleased to take forward discussions with the Clerks to see if there is a way in which we can do that, so that this Committee, through Parliament, is able to examine the work of the agencies at a domestic level. Some of that work is already taking place. As I have indicated, the Home Affairs Committee has looked at some of the issues and has taken a focus on Europol. I am sure it will continue to do so. It is not that there is not that examination and scrutiny. It is, following the Lisbon Treaty, whether there is a way that we are able to strengthen that further by providing more information to the Committee. I know, for example, that the Head of Europol, Rob Wainwright, has given evidence to the Home Affairs Committee on some of its inquiries on various different issues, not necessarily just specifically on Europol but also on things like human trafficking and Europol’s role in relation to that. I do not think that there is any reason why this...
Committee could not call representatives of Europol or Frontex to give evidence here.

Q74 Nia Griffith: What happens then? Suppose the committees do spend some time looking at what these organisations are doing and suppose they do find things that they want to raise and make some recommendations, what would actually happen to that information? Where would it go? Would it just be a complete waste of time?
James Brokenshire: I do not think it would be a complete waste of time.

Q75 Nia Griffith: How would you challenge them?
James Brokenshire: It would certainly assist this Government in its examination of the work of those agencies. It would certainly aid in that process in the debates that we have and the discussions that we have with other Member States at Council meetings. I think that scrutiny of itself is a valid and important thing, not simply in holding those agencies to account domestically but also in informing Government in the representations that we may make in relation to those organisations. There is value in it.

Q76 Nia Griffith: Would you see that as being formalised, or would you see that more as something that you have in the back of your mind when negotiating or when you are talking about these things?
James Brokenshire: I suppose I would see it as more informal, but I think it is a question of how that develops, and this is an evolving process. We have obviously been evolving our parliamentary scrutiny around justice and home affairs measures, looking at ways in which that can be improved. Interest from this Committee in the activities of the agencies would be useful. It is then a question how that develops and how best we can use the report’s recommendations and information that is then generated.

Q77 Chair: Minister, I will move on to what is called the 2014 block opt-out. Just to put this in context and for the benefit of those listening or watching, this programme, it covers approximately 130 criminal law and policing measures adopted before the Lisbon Treaty entered into force on 1 December 2009 under the old intergovernmental third pillar arrangements. The UK exclusively is entitled to opt-out of these measures en masse at the latest by 31 May 2014. If it chooses to do so, it will cease to be bound by the measures on 1 December 2014. The Home Secretary wrote to assure us that neither the Prime Minister’s announcement in Brazil that the UK would exercise its block opt-out nor her own oral statement to the House of Commons on 15 October were “in any way intended to pre-empt any view the European Scrutiny Committee might wish to express on this matter”. However, given the unequivocal words spoken by the Prime Minister in Brazil, is it not inconceivable that the Government would change its mind on this matter and decide not to exercise its block opt-out?
James Brokenshire: As the European Minister set out in the ministerial statement of January last year, we are committed to having a vote in both Houses of Parliament in relation to this very significant issue—the 2014 block opt-out. We absolutely remain committed to that vote, and before making a formal decision, we will have that vote in both Houses of Parliament. Clearly the Government, in actually taking a vote before both Houses, will be cognizant of the view that is expressed by Parliament in that regard. Yes, the Home Secretary and the Prime Minister have set out the Government’s current view in relation to the block opt-out, and that remains the case, but I think it is essential that we follow through on our commitment, as we will do, in relation to the votes before Parliament and that we will have regard to those votes.

Q78 Stephen Phillips: The Prime Minister said that the UK will exercise the block opt-out. In what circumstances could the Government possibly change its mind if Parliament or this Committee, or indeed the Lords Scrutiny Committee, recommended a different approach? The point is this, Minister: a decision has been taken without regard to the views of this Committee or the Lords Scrutiny Committee in the other place or the views of Parliament. That is extraordinary, isn’t it?
James Brokenshire: It is right for the Government to express its current view in respect of a significant matter, so that scrutiny can be aided and considered. We have a Treaty right that was given to us by all of the other member states, and the ability to exercise this by May 2014.

Q79 Stephen Phillips: I do not want to interrupt you, but the Government also has an obligation to consult Parliament, doesn’t it, which it accepts?
James Brokenshire: Which it is doing and will do.

Q80 Stephen Phillips: And a decision was made before Parliament was consulted. Yes or no?
James Brokenshire: We have said clearly that we will take proper account of the views of Parliament. Yes, the Prime Minister and the Home Secretary have stated what the Government’s current view is in relation to this important matter, but we will listen to the views of Parliament. Parliament will have its votes in both Houses and we will take proper cognizance of that view.

Q81 Stephen Phillips: What does that mean?
James Brokenshire: It means that if Parliament votes for or against, the Government will consider the strong view that Parliament has given on this significant issue. That is what it means.

Q82 Stephen Phillips: This is just an example of the Government—and it is not just this Government; all Governments do it—riding roughshod over Parliament and over parliamentary scrutiny, and over the established procedures by which this Committee, the Committee in the Lords and Parliament itself are entitled to be consulted before a decision is taken. Is that right?
James Brokenshire: I do not accept that. I think the Government is seeking to engage properly with Parliament in relation to this important matter. We are
compiling information and compiling our views in respect of each of the 133 measures. Indeed, some of those measures may well come forward through other proposals on repeal and replace. Some of the measures may drop out of the basket of the 133. Parliament, through the existing processes, will have detailed examination through the Title V mechanism in relation to those items that may subsequently come forward. We have committed very clearly to a vote in both Houses in respect of this matter, and no final decision will be taken unless and until that vote takes place.

Q83 Stephen Phillips: The Government has also committed very clearly—and this will be my final question on this—to exercising the block opt-out. You may have committed to consulting Parliament subsequent to having reached that decision, but through the Prime Minister’s speech in Brazil, the Government has also committed to exercising the block opt-out. Is that right?

James Brokenshire: Can I say this, Mr Phillips, to James Brokenshire:

Q84 Mr Clappison: I just want to come back on the issue of the role of Parliament in this without regard to the merits of the issue, because I have more questions about that. On the question of what you said about Parliament, are you seriously saying that if Parliament takes a decision and has a vote that is contrary to what the Government wants to do, all the Government will do is be cognizant of it?

James Brokenshire: No, I am saying—

Mr Clappison: That is what you said, Mr minister. I will give you a chance to take that back, because it was a very serious undervaluation of Parliament.

James Brokenshire: If Parliament expresses a clear view, say, that we should not opt-out of the basket of the 133 measures—

Mr Clappison: Whatever view Parliament takes. James Brokenshire:—or if it says that it would vote to go in, I would find it very difficult to see how the Government could take a contrary view to Parliament.

Mr Clappison: That is much better.

James Brokenshire: If I phrased it in a way that implied otherwise, I did not intend to, Mr Clappison.

Q85 Chair: I am glad to hear that, Mr Brokenshire, because the Prime Minister, being the Prime Minister, made a categorical statement in Brazil that the UK will exercise its block opt-out. If I may suggest so, there is a problem here for you, which is this: it follows that, on any vote, the Whips would be put on to ensure that what the Prime Minister said was not contradicted by the vote. Can I offer you a suggestion, which you might like to take back to the higher echelons of Government, which is that, in those circumstances, given the complete contradiction between parliamentary practice and our constitutional right as a Parliament to take a position on a matter irrespective of whether or not the Prime Minister has made a categorical statement, you resolve this by allowing the House to perhaps have a free vote?

James Brokenshire: Mr Cash, I certainly hear your point. That is a matter for the usual channels, I am sure, to take into account in the normal way.

Stephen Phillips: I am pretty sure you would win a vote on the block opt-out anyway.

Q86 Chair: You may well, but the important point is a point of principle, which is who decides what the policy should be. Is it going to be the Prime Minister or is it going to be Parliament? Of course, we in this Committee will be quite clear it has to be Parliament, although Mr Phillips might be right and you would actually end up with a vote in line with what the Prime Minister said. That is much better.

James Brokenshire: Ultimately it will be for Parliament to form its view.

Q87 Chair: The Home Secretary’s oral statement to the House on 15 October invited this Committee, Home Affairs and Justice—the three Committees in the Commons—and the EU Select Committee in the Lords to submit views on “the package that the United Kingdom should seek to apply to rejoin”. Does this not reinforce the view that the decision of principle, namely that the United Kingdom will exercise that block opt-out, which the Prime Minister has said we will, has in fact been taken before any of the Committees have had an opportunity to gather evidence and formulate views on the block opt-out?

James Brokenshire: No, because we will not take a formal decision until such time as the votes have taken place. It is rather to help consider the detail of the 133 measures that are subject to the block opt-out decision and to frame the focus of that. If there were to be a block opt-back into through the different process. I do not see that as in any way pre-judging the decision that Parliament would take on the in-principle decision; it is rather to look at and scrutinise that option and arrangement, so that discussion and debate is as informed as it can be.

Q88 Chair: We talk about a block opt-out; we talk about the whole question of 130 measures and all the rest of it. Do you not accept that, when you look at those 130 measures and then consider the impact that they have on the lives of the people who are the electors of this country, the whole question of the manner in which it is scrutinised—the issue of whether or not the Prime Minister might pre-empt a parliamentary decision, for example—is not just an arcane issue that happens to crop up in the context of scrutiny or procedure? It actually affects people in their daily lives, and that is precisely why it is so
important that Parliament comes to its decisions and it is not just a matter of a fiat from the Prime Minister.

James Brokenshire: It will be for Parliament to come to its decision in the vote that is taken on the block opt-out. It is absolutely right and proper that Parliament should have its say in respect of these matters. That is what we have committed to as part of the statement that the Minister for Europe made. We absolutely understand the significance and importance of this matter, and that is why it will be put to a vote in both Houses.

Can I thank you, Mr Chairman, for the letter that you have sent, with your colleagues in the Home Affairs and Justice Committees as well, to set out your thoughts on what the form of that might be? Certainly we will be giving that full and proper consideration in finalising and drawing up the arrangements for that vote.

Chair: Good. Thank you very much for that.

Q90 Mr Clappison: As we have said before, we need to know what it is exactly we are scrutinising if we are going to scrutinise it properly, no more so than here. As we have said, the Government has opted to have a block opt-out, but it has held open the possibility of opting back into the measures opted out of en bloc at some later date. That is one of the things that we need to have more information on before we can have any meaningful vote on the block opt-out, because it would be ridiculous to vote for an opt-out and then find that it was the Government’s intention to opt back in later on.

The Chairman of this Committee and the Home Affairs and Justice Committees have written to the Home Secretary and the Secretary of State for Justice expressing their disappointment at the dearth of information provided so far by the Government. The Home Secretary’s letter states that the Government has completed a “large amount of the analysis of the 130 measures subject to the block opt-out”. Can you confirm that the Government will share its preliminary analysis of each measure with us, much as it would do when preparing Explanatory Memoranda on new legislation, because it is becoming part of binding EU law, within the whole framework of the EU treaties, and others in trying to bring this analysis together. A lot of it is coming together, and we would hope to be in a position to share as much as is possible with you, as soon as that is practical.

Q91 Mr Clappison: Could Mr Bowie tell us exactly what they are? It would be very interesting for us to hear from him exactly what work is included.

James Brokenshire: Of course, and I will let Mr Bowie respond. At this stage, I do not think we are in a position to give a formal deadline or timetable to you, but I recognise that we need to give further information to this Committee and to the other Committees to properly inform and aid the scrutiny.

Q92 Mr Clappison: That is very helpful in its own way. Perhaps Mr Bowie could tell us exactly what he has been doing.

Kenny Bowie: There has been a lot of analysis on this that has been ongoing. We have been consulting with operational partners, the Devolved Administrations and others in trying to bring this analysis together. A lot of it is coming together, and we would hope to be in a position to share as much as is possible with you, as soon as that is practical.

Q93 Mr Clappison: Is your department looking at measures that you can opt back into or not?

Kenny Bowie: Yes.

Q94 Mr Clappison: It only has two options. It either opts-out or opts-in.

Kenny Bowie: Yes.

Q95 Mr Clappison: Have you any preliminary thoughts on that you can share with us?

Kenny Bowie: I think that is more a question for the Minister.

Q96 Mr Clappison: Perhaps the Minister could tell us.

James Brokenshire: Those discussions are ongoing across Government. Again, it is a question of having a cross-governmental view in respect of each of the relevant measures. What we have said very clearly is that there is a weighing-up of what is in the national interest, and we are examining where those measures that aid public safety and security, whether practical co-operation is underpinned by those measures and whether there will be a detrimental impact on such co-operation if pursued via the mechanisms. There are also other factors, such as whether there are civil liberty issues, or indeed the justice implication of this, because the key factor on the 2014 decision is that we become subject to the European Court of Justice in relation to the basket of measures from December 2014.

Q97 Mr Clappison: If I may interrupt, that is the key point. In fact, actually it was the previous
Government, to give it credit, that negotiated this block opt-out, because it did not want to go into the justice and home affairs chapter of the Treaty of Lisbon. That was given as an important justification for the then Government’s course. If your Coalition Government then proposes to go into that, you are going further than the previous Government went in terms of European integration.

James Brokenshire: That is why ECJ jurisdiction and the implications of some form of preliminary ruling or indeed infringement proceedings arising from these measures are some of the key elements that we are examining as part of the analysis. As I am sure you will appreciate, this is a complex, multifaceted piece of work. It is not simply the Home Office; it covers a number of different Departments that have an interest in these pre-Lisbon matters, which is why it is timely and detailed, and why we want to ensure that the information we provide to this Committee is as fully formed as we are able to achieve.

Chair: To cut to the chase on this, I come back to what I have said several times in these proceedings within my concerns about the daily lives of the people in this country. Actually, we believe very strongly that we need to have—as Mr Clappison was indicating—a preliminary analysis, because we cannot even begin our work on it until we get it. I am saying to you: will you please make sure we do get it, as a preliminary analysis? Furthermore, bear in mind that there are 133 of these directives or provisions, almost all of which would be the equivalent of an Act of Parliament that would have to go through both Houses. For practical purposes, we really need to have this preliminary analysis, because we cannot get on with our work otherwise. We are quite sure in our minds that we really need to have that information. Could you please take that on board and give it to us?

James Brokenshire: I absolutely hear the point that you are quite fairly making in relation to the measures that we have here, what we as Government are able to do to assist this Committee and its examination. Indeed, I recognise that with the number of measures that we have here, what we as Government are able to do to assist in the analysis and the breaking-down of the different points in respect of a particular measure—what it is intended to achieve and the different components to it. I certainly will take away the clear message that you have given in your letter and the clear message that this Committee has given to me today.

Chair: One last thought on this: the fact is that there is a labyrinth of law out there. Listening to what Mr Bowie and you say, we appreciate that it is complex. As you said, it is multifaceted. I come back to the point, and I am sure the Committee would agree, that this is something that also, because of its importance, needs to be got right, as long as you have that message and its relevance to what’s going on. It is not just somewhere out there called Europe; it is actually what is happening to British citizens as a result of legislation that is being put together by a lot of people whom we may not necessarily agree with. As long as you get that message and its relevance to what is going on, that would be helpful too.

James Brokenshire: I certainly acknowledge the significance of a number of the measures that are contained within the list of the 133, the interest that Parliament has in a number of those measures and the impact that they have on co-ordination, co-operation, law enforcement and other public safety issues. This is why the Government is giving this matter very detailed consideration. Equally, I understand the need to provide detailed information to this Committee and the other Committees to ensure that the scrutiny that you attach to this is fully formed.

Chris Heaton-Harris: Firstly, can I say I was thoroughly excited by the Prime Minister’s announcement in Brazil. I think it is a solidly sensible thing to do. I have written to him, you and a whole host of other people trying to ensure the UK goes down this particular route. Could you just remind me whether it is 133 measures that we are now talking about? Didn’t we opt into one recently? I do not know what the exact figure is.

James Brokenshire: The list constantly changes, and that is not because of some desire to take things in for the sake of it. The list changes for various reasons, in part because new measures come through. As we decide to opt in and use our rights under the new legal base, that can take matters out of the basket. I am told that the current number is now 131, and a further measure on victims that falls within the justice arena may also come from that list. It is therefore important to underline the scrutiny that this Committee and the House makes in relation to the measures that are what is known as repeal and replace, in the technical jargon, and therefore have the effect of being a new measure and equally taking a measure out of the existing basket.

Chris Heaton-Harris: I think that one on victims was the Council Framework Decision 2001/220/JHA. This is a very moveable feast. The Home Secretary did say in her statement to the House that some of these things are now entirely defunct. There is the Council Joint Action 1996/747/JHA, which targeted organised crime and established a directory of national experts combating various forms of crime, but that directory is essentially online now, so that is one that is completely defunct. There is Council Decision 2000/261/JHA, which is a standard questionnaire about alerts about counterfeit documents, which has been taken over by some software. I think we have requested an Explanatory Memorandum on which of the 131 or 130 are now defunct or being taken out. We are gradually whittling down to the core big arguments of European Arrest Warrants and some of the other big deals, which we can properly spend quality time looking at on this Committee.

James Brokenshire: I recognise that. Certainly part of the ongoing work is doing the analysis on which measures could be considered to be defunct. I certainly do recognise the request for further information. Indeed, on the other side, I know that we have provided in response to a question those items that we have not fully implemented. Therefore, on the question of implementation and infrastruc-
proceedings that might follow in respect of those measures—if they are not fully implemented by December 2014—equally this Committee is able to understand which of those measures there are to aid its consideration. The Secretary of State for Justice and I have answered parliamentary questions in that regard. If it would be helpful to this Committee to provide a list of those measures again or as well, I am sure that we would be very happy to do so.

Q102 Chris Kelly: Minister, you have already alluded to this, but can I press you for your best guess estimate of the number of measures subject to the block opt-out that the Government is actively considering opting back into, although we do appreciate that no final decisions have been taken yet? James Brokenshire: I am afraid that we have the 130-odd measures that we have in the list at the moment, and we have alluded to a couple of those measures that we believe are defunct, but at this stage I am not able to give you an indication as to which measures we are currently considering opting back into. That is part of the process that we are currently engaged in, across Government and across the Coalition, to come to the conclusions on those items. Clearly, we recognise the need for further information to be provided to this Committee and others at the earliest opportunity. That is what we are focused on.

Q103 Chris Kelly: Might it be around a quarter or a half? James Brokenshire: I am afraid I am not able to provide you with that sort of indication at the moment. All I can say is that we will only be opting into those matters that we judge to be in the national interest based on those factors that I have already spoken about. The detailed consideration of each of those matters will enable us to judge which of those measures actually fulfil those requirements.

Chair: References to the national interest remind me of Johnson’s reference to patriotism being the refuge of the scoundrel. I am always slightly worried when I hear people invoking the national interest. What it often means is what Government ministers decide they want to do. Maybe I could pass on, at that point, to Henry Smith.

Q104 Henry Smith: Thank you very much indeed. Minister, at what stage do you think there will be an estimate of the cost of the UK exercising its block opt-out of justice and home affairs measures? James Brokenshire: As you may be aware, one of the discussions that we have started is on the technical and legal issues surrounding the exercise of the block opt-out, should that be the formal final decision that is taken. It is possible for conditions to be applied. The Commission may assess whether or not conditions for participation may need to be met. Given that we already participate in a number of those measures, we regard that as quite a high hurdle. Equally, the Council may adopt a decision determining that the UK shall bear the direct financial costs, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the third pillar acts. Now, that is ongoing discussion; there is a lot of detailed work that clearly will follow through in respect of that. What I can say, as I think I have already indicated, is that we do intend to provide a full impact assessment of those measures that the UK intends to apply to rejoin. We will publish that, and that will set out a great deal of the analysis and assessment in respect of that.

Q105 Henry Smith: Can you give a general figure at this moment in time, and also what is your estimate of savings? James Brokenshire: Unfortunately, I am not able to give an estimate at this time. That is very much part of the detailed work. There are issues that are being considered on the cost of complying with measures. If we were not to comply fully with certain measures, there is an infrasction risk and a cost attached to that. We are analysing all of the different options that are there. Unfortunately, I am not at this stage able to give you that indication.

Q106 Chair: Is there a tipping point, do you think, in terms of opting back in, beyond which exercising the block opt-out becomes little more than a symbolic exercise? I am a little troubled about the symbolism of all this. James Brokenshire: This country has been given a right, under the treaties, to block opt-out or to stay subject to all of the existing measures. The arrangements that were struck were such that we have a binary choice of opting out or staying subject. I suppose I see it in that context, having been given that right, it is about the consideration of the exercise of that benefit, subject to the view of Parliament. There is rather a detailed examination of each of the measures to judge what is in the best interests of this country, taking into account the potential benefits that may be afforded in respect of operational policing and dealing with transnational crime that crosses borders. Therefore, I rather see it as a means of analysing those measures and judging which of those measures remain relevant and appropriate in order to best safeguard the interests of this country. I do not view it as a numbers game; I view it much more on the substantive merits of a particular measure, and I am considering it in that way.

Chair: I am very glad that you have put all this emphasis on Parliament, because after all it is on behalf of Parliament that we exercise our functions under Standing Orders, subject to the decision that is subsequently taken on a vote by the House of Commons. Of course, there is this thing called the whipping operation, so that whatever we may think about it, after we have discharged our functions, the next question is what happens through the Whips Office on what the Prime Minister may wish to propose. On that subject, I would be grateful if you would ask the last question, James.

Q107 Mr Clappison: You have spoken a lot, Minister, about the national interest, but I will just put this to you: there is a national interest in having our home affairs and justice legislation made in this country, rather than the European Union.
James Brokenshire: That is why I think, whatever I may think of the last Government, reserving the rights under the block opt-out is important. The issue of where our criminal justice system is generated and created matters. When we have a new measure that is coming before the Government on whether we should opt-in or opt-out, maintaining the integrity of our criminal justice system is a key factor in our consideration of whether we should be subject to a measure or not.

Q108 Mr Clappison: You will remember that the last Government gave staying out or having a block opt-out of the home affairs chapter, and not entering into the home affairs chapter of the Treaty of Lisbon, as the key reason why the Treaty of Lisbon was different from the constitutional treaty, and said that a referendum was not therefore required. That was the justification given by the last Government, so we got all of the Treaty of Lisbon, except for the justice and home affairs chapter, under the last Government. Here comes the Coalition Government and we are going to get it anyway.

James Brokenshire: I think I would rather say that we have given our present indication as to the use of the block opt-out, subject to scrutiny and to the vote in Parliament. I find it quite interesting that the Government is being criticised by the Opposition for even considering exercising the block opt-out that they themselves had put in place. If you put it in place, then it must have been contemplated that it would be used. That is what we are considering. We are considering carefully the individual measures that are subject to that block opt-out to judge whether it is appropriate to renegotiate to opt back into certain measures, but it is important to judge very carefully what those measures are, which is why the work is engaged in the way that it is, and recognising the importance of our criminal justice system and the integrity of that, not just now but in the future as well.

Q109 Mr Clappison: You mentioned that there was going to be a full impact assessment of those measures that the Government chose to stay in. Will that be given to us in good time for the debate on the block opt-out?

James Brokenshire: Yes, I think it would need to be, because again it is about the provision of information to be able to inform the debate properly. It comes back to some of the points of principle that we were discussing at the outset of this Committee session. I know that, for example, the Lords Committee is conducting its own separate inquiry in relation to the block opt-out decision. We would want that inquiry to run its course before the block opt-out vote is taken.

Q110 Mr Clappison: I am not criticising the block opt-out decision. I am just expressing the wish that it was a block opt-out. The Europe Minister’s written ministerial statement of 20 January 2011 promises that there will be a vote in both Houses before the Government makes a formal decision on whether it wishes to exercise the block opt-out. We have suggested that this should be a twofold process, involving at least a full day’s debate: first a vote on an amendable Government motion supporting its decision to exercise the block opt-out; then a vote or votes on an amendable Government motion or motions supporting its decision to opt back into individual pre-Lisbon policing and criminal law measures. Do you agree that the vote should cover not only the decision of principle on the block opt-out but also each individual measure that the Government proposes to opt back into?

James Brokenshire: As I have said to the Chairman, we very much welcome the letter that we have received from this Committee and the other two Committees, setting out the proposal that you have just read out, Mr Clappison. All I can say at this stage is that we will consider that proposal very carefully. That is subject to input from other members of the Government, so that we are able to respond to that suggestion that has been made. All I can say at this stage is that we will absolutely consider that proposal very carefully.

Q111 Mr Clappison: When you have that consideration, could you set that into the context of what the Prime Minister rightly told us about his European Union Bill—that he was trying to give Parliament and the people a say before powers are given to Europe?

James Brokenshire: We will certainly consider the comments that have been made in this Committee, as well as the letter itself, in considering our response to it. I note the point that you have made very carefully.

Q112 Chair: Finally Minister, you will have noticed that, in this European Scrutiny Committee, we put a great deal of store ultimately and fundamentally on Parliament being both protected and given the opportunity to investigate and hold Ministers to account. I trust that, as a result of the discussions that we have had this afternoon, you will be glad that we are holding this inquiry into our own European scrutiny. I would like you to finally comment on whether or not you think that European scrutiny is best done by parliamentarians who are determined to maintain the principles that you have witnessed during these proceedings.

James Brokenshire: I absolutely believe in robust and challenging scrutiny. Therefore, having parliamentarians who are well informed, knowledgeable and have that expertise is something that I value and think the House should value. Therefore, I do appreciate the inquiry that you are undertaking on this important matter, so that we can ensure that scrutiny gets even better. Yes, it may get more challenging for me, as a Minister, as a consequence of that, but it is important that Parliament does undertake that work. These are important issues, and it is right and proper that this Committee and Parliament more generally should be enquiring further in relation to matters that are coming from dossiers and proposals from Brussels, the Commission and the Council. I very much welcome that.

Chair: Thank you very much indeed.
Wednesday 12 December 2012

Members present:
Mr William Cash (Chair)
Mr James Clappison
Michael Connarty
Julie Elliott
Chris Kelly

Penny Mordaunt
Jacob Rees-Mogg
Henry Smith

Examination of Witnesses

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

Q113 Chair: It is very nice to see you this afternoon. Thank you very much for coming. We really believe that this is a very important moment or phase in the whole of the European Union, when questions of democratic legitimacy are being brought up the whole time. We had the blueprint from Mr Barroso. I raised the question of democracy in the light of the blueprint today, in Prime Minister’s questions, and scrutiny of course lies at the heart of democratic legitimacy so we are extremely grateful to you for the evidence you are giving. If I may say so, Katrin, it is very nice of you to come over from Vienna, which is a great pleasure for us. The whole question of comparative scrutiny is hugely interesting and important because if you are working within the European Union, the nearer you can get to a common framework for looking at the documents, the better. We are extremely grateful to you for the research that you have done, and we look forward to the answers to the questions. If you have got anything further that you want to add afterwards, do feel free to send it in written form because we regard this as a very important opportunity for us to be better acquainted with the views of the experts who have been looking at it.

The first question, which I will put, is that the scrutiny systems are often categorised as being document based or mandating. Do you think this is a valid distinction, and, as a subsidiary to that, if so, what are the advantages and disadvantages of each type of system? Finally, if not, what distinction do you use? If I may start with Katrin, if you would like to start—or if you would prefer Julie to begin, it is up to you entirely.

Dr Auel: No, that is fine, thank you very much. Thank you very much for the invitation. It is a great pleasure to be here. On document-based and mandating systems, I do not really think that this particular distinction is all that helpful, especially as they refer to two different kinds of objects. “Document base” refers to the object of the scrutiny, while mandating seems to refer more to the legally binding character of the scrutiny. Even though performing both implies that there is a document or a Minister? Finally there is, of course, the question of the binding character. Document-based systems are usually regarded as being politically binding at best, but there are also document-based systems that have a legally binding character, while the mandating system is as per definition, one where the committee has the ability to influence the Government position very strongly. I think it would make more sense to distinguish between systems along those three different aspects. You will find that most Parliaments have a mixed type between the two.

I think there are a number of advantages and disadvantages to both, and I think the most important is the question of whether European Affairs Committees or standing committees look at documents and form their own opinion. This puts a lot of pressure on them because they have to go through all of the documents and decide on which issues to issue a resolution, and that resolution has to be drawn up by Parliament itself. On the other hand, that means that there is a more in-depth scrutiny of several documents. With the mandating system and oral mandates in the committee, the great advantage is that European Affairs Committees tend not to overlook important issues because in most cases the Minister will come before the committee and report on what is on the agenda in the next Council meeting. The filtering function is, in that case, taken on by the Government. On the other hand, this means that Parliament very often only responds to what Parliament is presented with in the committee, and I think that somewhat limits parliamentary scrutiny in comparison with the documents or so-called document-based systems.

I think if you were to ask me about one very specific advantage of the mandating system, it is not so much that Parliament can legally bind the Government to a very specific position because, as experience shows, most Parliaments refrain from doing that because they know that their Government needs certain room for manoeuvre in the negotiations in Brussels. I think the distinct advantage is that there is a great incentive for...
Governments to provide all the relevant information in time and in depth to Parliament, otherwise Parliaments with a mandating system can refuse to give the Minister a mandate. We see in Denmark that this is sometimes the case—that the committee refuses to give a Minister a mandate when it feels it has not been properly informed. I think I will leave it at that.

Chair: Julie, would you like to comment on that? Could you be very kind and move to the next seat along because at the moment I am not able to see Katrin because of the seating? Is that all right? Thank you very much. I am sorry about that. Julie, would you like to comment?

Dr Smith: I was sitting behind the water bottles.

Chair: Okay.

Dr Smith: Just to follow up on some of Katrin’s points rather than replicating them, hopefully. I think it is not a question of either/or. There may be an element of mandating that would be desirable, but it needs to start from a documentary base. The starting point for answering the question has to be: what does the committee think scrutiny is about and what does Parliament as a whole think scrutiny is about? Is it about scrutinising legislation that needs to start from a documentary base, or are we really talking about holding the British Government to account in what it does at the European level? Assuming that there is an element of both those things, starting with the documents and looking at what we might want to consider in terms of subsidiarity and yellow cards, the documentary part is hugely important. In terms of looking at where the British Government fits in, bringing Ministers in front of committees, either this Committee or the departmental select committees, has a huge role to play. I think it is one of the areas where departmental committees could potentially become more engaged in the European debate without giving them hugely more work. If a Minister is heading off to a ministerial meeting, maybe they could give evidence, talk about what they are expecting to do ahead of the meeting, and provide a briefing afterwards, so that you have the opportunity for real scrutiny of what Ministers are doing.

I would suggest that the two systems are not necessarily contradictory, but that having something that is as mandating, as binding, as the Danes try would limit flexibility for our Ministers to too great an extent. If we want to engage in the negotiation process, so much of that is about working behind the scenes with colleagues from other Member States, and if you have agreed your negotiating position in public in advance, that limits the scope flexibility and may lead to suboptimal outcomes. Even if it creates a more transparent set of discussions domestically, it does not necessarily lead to the best outcomes for the United Kingdom.

Q114 Chair: Though, of course, if you are asking about whether it is information that is needed, that is one side of the equation. The other is the effect on the daily lives of the people who are voting for the Parliament in question, and what effect is it going to have on them that raises the accountability question. That, to my mind, would seem to be the overriding question. What impact is this going to have on the people for whom the legislature is doing the scrutinising? Maybe we will get on later to whether you feel that there are better systems employed in some countries than in others, because if it effectively turns into a kind of decree operation—and I fear that, in some countries, that is where it has been for a long time—we give a huge amount of attention on the basis of the procedures and standing orders that we have, and we look at all the documents and we have to decide whether it is of political or legal importance. Do you not agree that the impact on the subject or the citizen should be the first priority for a Parliament in terms of the scrutiny process?

Dr Smith: Yes, as representatives of the people, that is exactly what Parliamentarians should be doing. In a sense, calling Ministers in before meetings and discussing issues and expressing the concerns or the objectives that Parliamentarians feel are in the interests of either their own constituents or of the United Kingdom more generally would offer scope for informing the thinking of Government ahead of negotiations rather than waiting and listening to the Prime Minister giving an ex-post expose of what has happened at a meeting, and that could be done on a sectoral basis as well. So there would be a much greater scope for Parliamentarians to reflect the interests of their constituents in advance.

Q115 Chair: Governments may have their own agenda, which is why it is so important to have an all-party Committee, with people from all sides of the political spectrum, so that the function of the committee in question should be, I hope you would agree, primarily to hold the Government to account and to ask the right questions in the interests of the citizens, and to ensure that that is on an all-party basis so that we are able to act in the national interest. Ariella, have you got some further thoughts on this?

Dr Huff: I do not want to replicate what my colleagues have already said. I agree with them very much, though. I think the distinction between document-based and mandating is a little bit simple. Most systems, even the mandating ones, operate often on the basis of documents—they do not dream things up. The only thing I would add to that is that some systems are perhaps more effective than others at developing a series of priorities, rather than reacting to everything that comes in, as it comes in. I think that is something else that perhaps we need to consider when we think about how best to do European scrutiny. Given the volume of documents that are produced by the European institutions on a yearly basis, even week to week, it is important in many cases for Parliaments to develop a series of priorities—what are the particular dossiers they are interested in, what is more important than other things? The House of Commons can be very effective at that, but there are ways in which it could be done perhaps slightly more effectively.
looking at on a comparative basis, where do you rank the United Kingdom, for example if you could be as broad based as that, in terms of the quality of the analysis and the effectiveness of the scrutiny system?

Dr Auel: I think that brings us back to the point that Julie raised. I would not want to draw up one ranking and put the UK Parliament on it somewhere. 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. Another issue where I would rank it slightly lower than some other Parliaments is when it comes to—and I think we might want to raise the topic later—engagement with the public. There have been slightly more plenary debates on the floor of the House in the last two years, which has a lot to do with the referendum, the EU Bill and of course the crisis. Before that, I had conducted a small analysis, a comparative analysis, into debates on the floor of the Houses of different Parliaments, and the House of Commons was ranked quite low on that compared, for example, with the French Assemblée Nationale or the German Bundestag, which discuss European issues far more frequently on the floor, and not only the big topics, but policy issues, so the EU issue is more out there in the public domain.

Q117 Chair: Do you have any written material on this which you are able to provide us with by way of a comparison?

Dr Auel: On the study we do?

Chair: Yes.

Dr Auel: We are still working on the OPAL project.

Chair: Good, by the time we have finished our inquiry, perhaps we could have the benefit of your

Q118 Mr Clappison: It was thought at the time to be a rather good debate.

Dr Smith: It got picked up on by the media, but the work of scrutiny committees very rarely gets picked up in the same way and I think that is one question. The other is when do you want to become engaged because I know David Lidington has used the phrase “upstreaming”, and the Foreign Office are quite keen on the idea of upstreaming, of getting involved in the process earlier. There is a question about whether scrutiny is really only looking at documents that already exist or whether the committee and Parliament as a whole—and clearly there is a difference between a scrutiny committee and the role of Parliament as a whole—want to influence the process because the earlier you engage, the more you work with the European Commission before legislation is drafted, the greater your ability to influence. That is something that, 20 years ago, lobbyists had already been able to realise. Why are so many of them in Brussels? Because they want to shape the agenda.

At the outset, the Commission was to draft its legislation as it saw fit and then increasingly it realised that, if it just put in proposals, the Council and/or the European Parliament would increasingly seek to amend it and change it, so there is scope for getting in early but some of that is about knowing what is going on in Brussels. I know some of the written evidence that has been given has suggested working more closely with—
Q119 Mr Clappison: The system just seems to be very much designed for the benefit of lobbyists. It is a boon for them but it is very difficult for ordinary people to be heard.

Dr Smith: I think that is right and again that is where there is hopefully scope for national parliamentarians to have a role representing the interests of their citizens, but it needs to be done in a co-ordinated way in that one MP probably is not able to shape the debate but the Committee may be able to do so. The national Parliament representatives, the representatives of the Lords and the Commons in Brussels, are incredibly well informed and spend a lot of time talking to their opposite numbers representing national parliaments from the other Member States. I think trying to find a mechanism for working closely with them and looking at things ahead of time would enable the Committee in terms of scrutiny, to be able to say, “We know what is coming up. We can engage in a work plan at an earlier stage”, but it also may offer the opportunity of looking at areas where the Commission is proposing legislation and talking then to UKREP to put in a national parliamentary position before the Commission has got to its drafting stage. Working with the national Parliament officers in Brussels and then with UKREP would give the potential of greater influence for the representatives of the people.

Q120 Mr Clappison: We have our scrutiny reserve systems, and I am sure you are very familiar with it and how it works. How effective do you think it is in moderating the behaviour of Ministers? Anybody can have a go at that one.

Dr Auel: We have conducted a little study into scrutiny reserve, so I shall answer this. I think it depends on—again, I am sorry that I always have to make that qualification—what you want to have an impact on. 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. With regard to the former, the UK’s scrutiny reserve system is one of the—if not the—most effective of the non-mandating systems. There is one particular reason for this and it is that this Committee follows up on breaches. You keep a very, very close eye on it.

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.

I do not think that it is a very effective instrument and I am not sure how you could make it more effective beyond a proper legally binding mandate.

Q121 Chair: Could I just come in at that point? I can think of three Ministers who, subsequent to their having failed to perform properly in relation to European scrutiny issues, surprise, surprise, have lost their jobs, three of them in the last four years, and the manner in which we go about it, certainly from a domestic point of view, is to put their feet to the fire if they fail to perform as they should. The problem we have, of course, is that once we have done our job, it is then a matter for them in the Council of Ministers to decide how they are going to go on that point because on a number of occasions I think Ministers have become aware that they are at risk in terms of their remaining in post.

Dr Auel: Again, as I said, I think that the greatest asset of the scrutiny reserve here in the UK is that the European Scrutiny Committee actually does follow up on breaches and invites the Ministers to give evidence on that, so it makes the situation very uncomfortable.

Chair: I wonder if I could just follow that up. The Minister may have lost his or her job, but the legislation still went through. That is the problem but that is not our fault, if I can put it that way round. We have done our side of the equation. The question is, have the other functionaries decided that they think that their opinions are more important than Parliament’s? That is a very dangerous situation to get into.

Dr Auel: I think you will find that, when you look at the Council regulations and so on, you will not find any formal rules, on any kind of reserve—and you know that there are other reserves that Governments can enter, linguistic reserves, general reserves—on how to deal with them. If there is ample time in the legislative process and Government puts down a parliamentary reserve, all the other Government representatives will be sympathetic because they also have their own scrutiny systems at home to go through. Very often the Presidency will try to delay the issue but if that cannot be accommodated and if it is clear that there is a majority for a legislative proposal anyway, from what we have learned, the scrutiny reserve seems to have rather little impact.

Chair: I think James had in mind a question on bicameral legislature. Just before that, because where I think where we are going on this is interesting, you know about the blueprint that has just been published by Barroso in relation to the proposals for fiscal, banking and political union. I raised that this afternoon with the Prime Minister. That document, under the heading at paragraph 4, “Political union, democratic legitimacy and accountability” states: “The European Parliament and only it, is that Parliament for the EU and hence for the Euro ensuring democratic legitimacy for EU institutions’ decisions”. That reflects the attitude.

I am not going to ask you to go into every detail here but you will understand the words “and only it” raises some very big questions about scrutiny as well as
policy making. I would just like to put that on the table. You might like to reflect on that because I think this document demonstrates the line of route that is now being followed, which is substantially a shifting of gears towards downgrading the national Parliaments although it does go on to say, “At the same time the role of national Parliaments will always remain crucial”—I am glad they make that point—“in ensuring legitimacy of member states’ actions in the European Council and the Council”. When we are considering the question, they say it is crucial, but it is a secondary and subsidiary role, certainly as far as the European Commission is concerned in this document. I will leave it at that because otherwise we would spend the whole of this afternoon on that issue alone.

Q122 Mr Clappison: On the bicameral points, we have our system, the House of Lords has a system as well. How do other bicameral Parliaments operate scrutiny? Ariella?

Dr Huff: I am sure the others will have things to say about this as well, but there are obviously a range of different approaches. I think that quite a few bicameral parliaments have systems that are similar, in the sense that each House is effectively responsible for its own system and the particular priorities it has. They tend to work on the whole, perhaps Katrin may want to jump in on this, in parallel rather than necessarily in tandem, as it were. There is one exception that is worth thinking about, which is the Irish system where they have a joint committee in which both Houses are together but that is very typical of the Oireachtas system. Most of them come into the joint committee except when financial issues are being discussed, so all these issues are closely related to the broader context of the ways in which these Parliaments operate. There tends to be, at least our research has suggested, some co-operation at staff level between the two Houses in most countries. Certainly this is the case in the Netherlands where there is co-operation at staff level but not formal co-operation at M P level. Basically it is the same in Germany as well and there has been some co-operation in Austria, in Germany—Katrin may know more about this—and there did tend to be different parties in charge in the Bundesrat from in the Bundestag, but co-operation tends to happen there. We have also found that there tends to be quite a bit of co-operation in Brussels between the two representatives, if there are two representatives. They keep one another informed, share documents sometimes, and share documents with other Parliaments as well that are not coming in quickly enough through the official routes. It is important to remember that, obviously both Houses are sovereign in the sense that they decide what they want to look at and they decide what their own priorities should be, but in general the trend is for administrative staff co-operation rather than a formal process of co-operation.

Dr Auel: If I can add to that, we find to my knowledge only two Parliaments where we have such a joint committee. The Spanish Congreso also has a joint committee. The Dutch Eerste en Tweede Kamer used to have one but they dissolved it again because one of the problems is that a second chamber represents different interests. Of course this is particularly the case in Germany where the second chamber represents Länder interests, which also means that it is difficult for the two Houses to co-ordinate their interests in the usually very short time. You will find this in particular with regard to the subsidiarity issue where two Houses in a bicameral system hardly ever work together because they cannot do that within the eight weeks. It also would mean not having the kind of division of labour that you often have between two Houses where they look at scrutiny in different ways, as I know is also the case in Parliament here. If I could just add one more point to what you were asking earlier about the timing, you will find that most Parliaments see this as the greatest problem. How early can they come in and when should they send their official opinion and how should they amend it afterwards? You will find that the most powerful Parliaments in terms of those that are considered the most influential have now shifted the scrutiny to a very early stage. For example, in Denmark, at least on paper, the Government now has to get a mandate to start negotiations before the Government position is officially formed, i.e. before negotiations start in the working groups and it has to keep Parliament consistently informed of any changes that come about in the negotiation process. Finland is the same. One thing that I find interesting is the Dutch Parliament has developed a stringent procedure of looking at the annual legislative work programme of the Commission very early on and deciding which of the documents it wants to scrutinise in more detail so that it can prepare early and ask the Government very early for information on these topics coming up over the next year.

Q123 Julie Elliott: Thank you. The OPAL project has been mentioned, which I think you are all involved in. What is the timescale and purpose of this work and what gaps in knowledge is it seeking to fill? Dr Smith: This is a project that is funded by the four national research councils of the UK, France, Germany and the Netherlands, so the ESRC funds the British bit. The idea is to look at a role of national Parliaments since the Lisbon Treaty. Obviously there needs to be a comparative perspective in looking at what was going on earlier so we are not just starting at year zero being the introduction of the Lisbon Treaty, but trying to understand what role national Parliaments are playing in the European integration process, what role they are able to play on a comparative basis. We are doing an element of quantitative data collection looking at all 27 Member States, 28 next year including Croatia, and some more in-depth analysis on a range of policy areas looking at eight national Parliaments including the UK in order to get a real sense of, is there best practice, are there ways that Parliaments could work more effectively? It is filling in the academic literature but we very much hope as well that it will feed into practice. One of the things that the team can do is look comparatively and feed into evidence sessions like this one, and also talk not just to parliamentarians, but to clerks so that there is an element of looking at
what the representatives of the people are doing but also looking at what administrators are doing, and what scope there is for inter-parliamentary co-operation. So there are a range of issues that have been looked at through this whole process of scrutiny initiated by the European Scrutiny Committee in the UK.

Other Parliaments have looked at their scrutiny processes as well so the Dutch case in particular seems to suggest some elements of best practice that we would hope to feed back into the policy process. Some of it is entirely academic, some of it is intended to feed into policy making. There is also an element of looking at relations with the European Parliament so it fits with other research that I have been doing in particular, looking at inter-institutional co-operation in the European Union. One of the areas that we are keen to look at more closely is vertical and horizontal communications between national Parliaments and the European Parliament both formally through the institution but also informally with links between members of the national Parliament and members of the European Parliament. Some of that could be communicated, some of it may have party links, and all of it can facilitate better scrutiny overall. I do not agree with the Commission President; I think the role of national Parliaments is hugely important and one of the things that Lisbon was precisely devised to recognise was that national Parliaments kept losing out through the integration process; that their role was not officially recognised, and that it is important for the European Parliament and national Parliaments to acknowledge what each does and to try to work together to have scrutiny that is more effective overall, rather than simply saying, "Right, European Parliament does European stuff and national Parliaments can stay at home and mind their own business." The whole nature of the integration process does not work like that anymore. It is the nature of the integration process that is that, if you go to the European Parliament everything is predicated on the assumption that it is a federal arrangement and that is the direction in which they seem to wish to promote it. In terms of the national Parliaments, we are approaching it from a domestic point of view and yet under the European Communities Act in respect of the United Kingdom, under Section 2, we are under a voluntary obligation to accept the legislation which comes out of the process, so, for example, if you have a qualified majority voting system in the operation, the effect on the scrutiny could be to override the decisions that are taken by the individual Parliaments who are saying, "Well we think you should take special note of this", or, "You think that we should take a hard line on that". When it comes to a qualified majority vote, the decision either by consensus or by actual vote goes against those views, however well you have scrutinised the arrangements. Does that present you with a kind of dilemma and a problem, which it certainly presents to us, which is, rather as M R Barroso has said in his blueprint, the European Parliament should prevail because that is the bottom line that he is putting forward.

**Dr Smith:** I do not think it presents us as academics with a particular problem. It gives us something to study.

**Chair:** It gives us a real headache.

**Dr Smith:** That is straightforward. But there is clearly a whole debate about what is the role of the European Parliament versus the national Parliaments, and the debate that pops up periodically about should we not have a third chamber, one that brings in representatives of the national Parliament to be another parliamentary level. That is particularly problematic because if you look at the European Parliament before 1979 when it comprised representatives of national Parliaments, it has some strength that the current European Parliament does not have, whereby representatives of national Parliaments would discuss things with their European colleagues, come back and be part of the British Parliament, or their own national Parliament, so there was probably greater engagement of the national parliamentarians with the European process. Equally, they could not do a particularly effective job of scrutinising European legislation as a whole so I think a directly elected European Parliament has a role to play. Another chamber of national parliamentarians acting as a new institution could be problematic, but having some degree of national parliamentarians working on a collaborative basis, going beyond COSAC could be useful because at the moment, you are absolutely right, there when there is QMV. 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. However, in terms of becoming involved at an earlier stage, finding out what the proposals are likely to be, working with colleagues from other national Parliaments and then either thinking of scrutinising, of reserve at an earlier stage, getting a yellow card at an earlier stage, greater cooperation would actually empower national Parliaments, but it needs to be done on the basis of understanding, trust and developing relationships, whether between clerks initially or parliamentarians. COSAC may be part of the way there but it does not meet sufficiently frequently to enable the relationships that you might need in order to think, ‘Yes we will pick up the phone to our Spanish colleagues and our Dutch colleagues because we think on this one we are going to be able to work effectively together’.

**Chair:** Julie, I know you have to go at 3.15pm. You are going at 3.15pm, are you not?

**Julie Elliott:** I am going. Unless Julie is going at 3.15pm.

**Dr Smith:** I am staying until I am sent away.

**Chair:** I was told by the Clerk that it was Julie who was leaving. Julie, would you like to take the next question? Sorry.
Q125 Julie Elliott: Yes. It is even more confusing because my original name was Julie Smith, so when I look at that I get confused. Julie and Ariella, your memorandum states that parliamentary scrutiny in the UK, as in many of the Member States, has not kept up with the new rights for national Parliaments introduced by the Lisbon Treaty. Can you explain the reasoning for this statement?

Dr Smith: Is that something you wrote or did I write it?

Chair: You are trying to work out who wrote it, are you?

Dr Smith: Yes. Which paragraph were we? I have got the evidence in front of us.

Chair: I am glad it is giving you food for thought.

Dr Smith: Looking at the bit that I know I wrote I think part of the issue is not so much just whether it is taking on board what has gone on in Lisbon but the whole change to the European Union over the years.

It goes back to the point about QMV, that if you think about the 1972 Act, it was predicated on the basis effectively of unanimity that although the founding treaty talked about the move to QMV, by the time we joined, essentially the decision making was on the basis of unanimity and so agreeing to implement everything that had been agreed by unanimity was one thing, scrutinising European legislation when we have QMV is clearly different. The other thing is the extent to which European policy now permeates so many areas of domestic policy that, if you start off with coal and steel, it is a very specific area and the more it is engaged in environmental policy, agriculture, economic policy, the idea that we need sectoral committees, departmental select committees, to work in the European integration issues becomes increasingly important.

A European scrutiny committee can play an important role, but most of the other departments and most of the other parliamentary committees also need to be thinking about Europe. It does not matter whether you call it mainstreaming or decentralising or devolving to the select committees, it is important that, to the extent that Europe has become pervasive in a lot of areas, the scrutiny process needs to reflect that, and not just this Committee but the sectoral committees that are doing it. If they view European as being done somewhere else, it means that domestically we are not looking at all the aspects of our own policy making, but just looking at what is emanating from Government proposals does not do justice to scrutiny, so we need to think about that a lot more.

Chair: Could I just follow that up by asking another question relating to what you have just said? You see the White Paper in 1971, which I am sure you are familiar with, was the basis on which the 1972 Act was passed and it was only passed by a very small majority, I think it was six, on what was purported to be a free vote. The question is what did it say in the White Paper about this issue? What it says is, we will guarantee to preserve a veto in our own vital national interest and to do otherwise would imperil not only our vital national interest but also imperil the very fabric of the community itself. When the 1972 Act was passed, which you just referred to, that was the basis on which it was put forward.
had the Council and the Commission and then you had the EU Parliament, and we were somewhere hanging on to the shirt tails of those. What new rights did we have to influence anything?

**Dr Smith:** I was thinking about this the other day when I was trying to commit something in writing to the Hansard Society and it struck me that if I was being asked to justify what I was about to write I would be struggling because I was about to say the Lisbon Treaty is seen as giving new powers to Parliaments and then I thought no self-respecting national parliamentarian is going to say, “These are new powers to us” because our Parliament is sovereign. There are real questions about what the treaty claims to do and whether a national parliamentarian would want to accept that it was giving you powers at all. There is a question of what we are doing and what we are seeking to do. What was clear from treaty change after treaty change from the Single European Act onwards was that the European Parliament got more and more powers. What was also clear was that in the Amsterdam Treaty, the Luxembourg compromise and the whole idea of a veto in terms of national interest was enshrined, yet on the idea of the UK claiming a national interest and blocking something, it is difficult to conceive what areas we can do that in. So it is a very limited field. In terms of the Lisbon Treaty, the formality is to say, “Well, national Parliaments have a new role to hold back the integration process”. In practice, it is only going to work if groups of national Parliaments really feel able to work together. It is quite limited in its scope and I am not going to try and justify the Lisbon Treaty. I think there are all sorts of things in it that may well look like a constitution and they are all sorts of things that maybe could have been done very differently, but we are only talking about scrutiny today so I do not want to get into the others.

Q128 Michael Connarty: I want to move on. Sorry. We could have had a complete session just on this question, but please come in, Katrin.

**Dr Auel:** I think you find that most academics working on the so-called Lisbon rights were not very enamoured with them. Very often you will find the argument that during the constitutional process, during the treaty revision process they had two problems. One of them was we need to solve the subsidiarity issue and one of them was we need to give national Parliaments something to do and so there were two problems and somehow the two were joined. Monti II and the recent yellow card have not convinced otherwise. I do not think it is a very fruitful exercise when it comes to influencing the European legislative process because precisely as Monti II shows this will work if Governments do not want a directive or a regulation, and if the Commission already anticipates a lot of opposition in the Council. Otherwise, I do not think it will work. I do not think we will see another yellow card against the Governments of the participating Parliaments. On the other hand what I do see is that it has generated a kind of discourse around the importance of Parliaments and the importance of involving Parliaments. I think this is where we do see an impact because the Lisbon Treaty with all its hooplah about being the parliamentary treaty has led to Parliaments having a very close look at their own scrutiny systems, overhauling the systems, trying to make them more effective to meet the eight week deadline, and while that might not be all that helpful with regard to the early warning system or influencing things at the European level that has been quite a desirable outcome, as has been at least attempts to intensify into parliamentary co-operation.

**Dr Huff:** Just to add to that, I think when we began this project we started by asking MPs in a number of countries, “What effect has Lisbon on your arrangements?” and most of the time, what we heard has been, “Lisbon has not made me more interested in Europe but the crisis has”, and that has then been folded into all the new powers, so-called new powers, that Lisbon has given. For example a colleague has said, “I spoke to a German MP and they said ‘My constituents are asking me questions about the EU now and this is feeding back into things that normally I would have thought were quite separate from my work on the EU’”. That is because of the crisis and because Monti II has fed into one another. As Katrin pointed out, and she is absolutely right, it has in some respects caused a rethink but there have also been domestic causes of that relating to the crisis and different Governments’ roles, particularly in countries that have been either on the giving or receiving end of financial assistance.
Michael Connarty: I had noticed, but I did not think it would call for a quorum count.

Chair: He has just nipped out for a moment so he will be back in a second.

Michael Connarty: Okay, the question is asked. You will have to wait to give me an answer.

The Committee suspended for one minute.

Chair: The extent to which you have looked at this has come as something of a revelation. I did not think anybody was looking at any of this and now I find there are three of you and maybe others as well who are actually giving it the most incredibly intelligent analysis because it has been troubling me for a very long time. I can only say that it is greatly welcome to know that there is all this intellectual firepower that is being brought to bear on, for me, the simple question of what the people who are receiving the legislation are actually experiencing, what they can do about it and what could be done about it. We are grateful to you—I will have to put that on the record later. Now, James, thank you very much indeed. We are now resuming.

Michael Connarty: Yes, the question has been asked, I am sure they have the answers.

Dr Auel: There used to be a greater distinction between different countries with regard to the extent of documents that they received and all that discussion has become, at least when it comes to public documents and legislative proposals, somewhat moot with the Lisbon Treaty because now Parliaments receive everything from the European institutions directly. So that has been a levelling process. One of the questions is what kind of information do they receive in addition from the Government, how good is that information and also what kinds of documents do they receive beyond the public ones? What I find interesting is that COSAC has made an investigation into this in the questionnaires to its 17th report. From the answers from national Parliaments, we can see that the UK Parliament is among a few 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. I think that would be very instructive to have a look at.

Q130 Michael Connarty: But having them and having them in some way formally recorded and available to the public in the way that we do all our Explanatory Memoranda and so on, everything the Government gives us is available—in terms of volume, how would we compare with others in terms of the number of documents that we process and end up in our reports, with every new document being a new chapter?

Dr Auel: Unfortunately I do not have precise numbers on this.

Q131 Michael Connarty: In terms of more, less, a lot less?

Dr Auel: Some receive less, but most receive about as many because they receive all of the documents, the public documents, they receive limité/restricted documents plus COREPER and Working Group documents, and then it very much depends on whether, in the numbers they give, they count Government documents. For example on its website the European Affairs Committee of the Danish Folketing says that it receives annually 1,500 documents and Government memoranda and it is not clear what the percentage of each is.

Q132 Michael Connarty: Every one of our documents comes with a memorandum from the Government, every single one. So when we talk about a document, it has got a Government memorandum attached.

Dr Auel: Indeed, but I do not know whether the 1,500 documents and memorandum in the Danish Parliament means 750 plus 750 or whether they get more documents so it is very difficult to be more precise on this. The 17th report also simply asked Parliaments whether they were getting less than 500 or over 500 and most of them get over 500 so it is difficult to be more precise.

Dr Smith: The short answer is we do not have a precise answer. However, given that we have colleagues in various states and we are doing some quantitative analysis of all the Member States, we can certainly go and try and find out. We certainly have eight member states where we are doing in-depth analysis and we ought to be able to get answers. We can try and get it for the whole 27 because our colleagues in Cologne are co-ordinating a handbook on national Parliaments in Europe. We have done interim reports already and the handbook should be coming out 2014, but we could ask the handbook contributors to find answers to this.

Q133 Chair: How is this working? It looks to me as if we are not getting it. Is it because the Government does not really want us to have it? Is it because the European Commission does not like the idea of us seeing it? Or is it just that we are not asking for it, although we would not know what it was unless we knew it was there. What is it that is allowing other Member States to get documents that we are told, being limité, are strictly confidential? I have received documents in the past and I have only on one occasion felt it necessary to go to the Speaker to ask for an urgent question, which I did get on that occasion because it was so important. This is not a small matter. It appears that some Member States, by hook or by crook, are getting hold of documents. If it is not being supplied to them by the European Commission as a kind of favour or privilege—you tell me it is not, I will accept that you say it is not—how do they get hold of them? Should it not be a completely level playing field and was it the purpose of making them limité anyway?

Dr Auel: It seems to be a question of how willing the respective Government is to forward the documents to Parliament and we find that there are some Parliaments who are regularly forwarded these documents, sometimes upon request and sometimes...
automatic. There are also quite a number, when it comes to limited documents for example, of Parliament that have access to the governmental database, which means they can automatically access almost everything that the Government can access.

Q134 Chair: What you are really saying is if you are going to point the finger anywhere, it would be at the British Government?

Dr Auel: Yes. I am glad we have put that on record.

Q135 Michael Connarty: The Chairman dives in on everyone’s questions, you will notice, because he is so intense about these things. Everyone seems to compare us on a spectrum that starts with us and heads towards Sweden, Denmark and Finland but in reality when we have met people, colleagues in other countries—I will not name them here because they may be embarrassed—they have said that their scrutiny process is a sham. They do not do very much serious discussion in their so-called European Committee on European matters compared with us. They tell us all the time that we are well ahead, we are the gold standard of using those huge documents as a basis and trying to use the scrutiny reserve process as a process rather than mandating. I do not know if that is because their other committees take up the issues on a mainstreaming basis but they have complained in a number of cases when I have been in other Parliaments that we are well ahead and people always seem to compare us with the mandating countries. Is it true, in a sad way, that people have as much debate and influence and information as they claim? Because it is not what I find when I talk to my colleagues, and I have been talking to them now for 14 years—not as long as the Chairman—and I always get the impression that maybe they have come up to the mark post Lisbon. They certainly were not. I do not think, as good at scrutinising documents or having documents, although there were clearly mechanisms whereby some Parliaments had access to limited documents in the way that we did not and published them?

Dr Auel: That refers to what I said earlier about the advantages of both document based and mandating systems, but also to my comments when I was asked to rank the UK Parliament. When it comes to the analysis of documents and to the filtering function, the European Scrutiny Committee does a tremendous job and it also makes the process a lot more effective in Parliament in the UK than it does elsewhere where documents are just dumped on European Affairs Committees who then somehow try to deal with the information overload. I do not think we would in any way want to criticise that part of the process. I think when it comes to having influence the Finnish Parliament, because it gets in very early in the legislative process, because it involves the standing committees in a very stringent way, it does have greater influence on the negotiation position of the Government, but that comes at a cost, and the cost is that the committee meetings take place in private where they can discuss issues with the Government in a very frank way. Whether that translates into having influence at the European level with a multitude of actors being involved, both formally and informally, in the legislative process I think is a different matter. As powerful as they might be, neither the Finnish Parliament nor the Danish Parliament make European policy.

Q136 Michael Connarty: Do Julie or Ariella want to add anything? You could also comment, because you already touched on it, Katrin, that, in the Explanatory Memorandum system that you seem to commend, what comes to us is much more analysed and focused than just dumping documents onto a committee. How does Julie or Ariella believe that the system works compared with other systems?

Dr Smith: I suspect that one of the problems is whichever system you are in, it can feel like a shambles. When I writing my doctoral thesis, which is on the European Parliament but I had a comparative chapter on the role of Parliaments, it was quite clear going back to the 19th century that people always harped back to a golden age of Parliaments and I suspect that there is always a sense of maybe it is done better somewhere else, maybe it does not feel quite right and if you are in that process it could be better. I think the two chambers that traditionally were seen as exemplars of very different types were the House of Lords and the Danish Parliament. The Danes in terms of mandating. So strong and influential in one way but obviously binding the hands of Government in a way that maybe did not help the Danish interests in the long run. The House of Lords, in terms of the very in-depth studies they do. 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. The work that is done here is very effective and efficient. The question is then how influential can it be and how far does our parliamentary system enable committees to impact on what the Government is going to do, and that is the bit that becomes much harder. I think there is a trade-off, not between mandating versus documentary, but the more you try to mandate, you can say Parliament’s effective and maybe influences Government but that may not help the long term negotiating outcomes. So there is a balance that needs to be struck. I also think the issue of whether decisions and discussions are in private or in public does matter. Going back to the other question of how we get documents, or that some of the Nordic countries are just much keener on transparency so governments are happier to divulge documents and so on. One of the things that seems to happen at the Brussels level is that national Parliament representatives are saying, “We sometimes give documents to our colleagues from other national Parliaments and they give documents to us”. It may not be that somehow this Committee is not pressing the British Government hard enough, it may be just that overall there are different ways of getting documents and some of it is done on an ad hoc basis in Brussels, which is not something as an academic I would be promoting as an idea but in terms of how it works in practice, it is all messy, but it means that there is scope for maybe infiltration a bit further that way.
Dr Huff: With respect to the point about Explanatory Memoranda—Katrin knows more about this—I think terms of the overall trends, there does seem to be a common complaint about timelines. Something that even the Danes have complained about is getting information from the Government in time to do something about it, whether through the yellow card procedure or in any other way. That is something that is cited almost across the board as a problem, including here. It is just how long it takes for departments or the Government in general to get information to a Parliament and I think the UK is not unique in having that problem.

Q137 Michael Connarty: Moving on to one of my pet subjects, seeing as both Dr Huff and Dr Smith comment on the fact, you say, “The memorandum states that the current scrutiny system is particularly poorly equipped to scrutinise non-legislative policy areas such as common form security policy and common security and defence policy.” Can you explain your view in more detail and suggest some potential solutions to that problem?

Dr Huff: I think what I would need to talk about the CSDP scrutiny. It is important to see it in the context of foreign and defence policy scrutiny more generally, because of course this is an area in which many Parliaments have traditionally been held somewhat at arm’s length from Government, and Westminster especially I think, compared to some other European Parliaments, does not have that many legal means to oversee decisions that are taken in the area. There might be increasingly perhaps a political requirement to consult Parliament. For example in a lot of other countries—Germany, Italy, Ireland—Parliament must be consulted before any troops are sent abroad, even in very small numbers. That is not the case here. There is no requirement for example for Government to come and ask for Parliament’s approval to send 20 people on a mission to Africa. So those legal aspects are not there in general in common security and defence policy and that places a great strain on the ability to scrutinise the CFSP and CSDP. All that being said, the key here is that non-legislative policies in general raise some questions about how a document-based system like this one can scrutinise areas where documents come in a variety of guises, in many cases non-typical guises—everything from Green Papers to Action Plans. Reading some of the previous evidence that has been given I understand that, for example, you get some Action Plans and not others and I think something about the Caribbean strategy versus Central Asia, one of them was deposited and the other one was not. Things that come from Council conclusions are often not deposited. So there is an ad hoc nature to this scrutiny that makes it very difficult to do because you are not looking at legislation. This to me is quite closely linked to the point that Katrin made earlier about the relative lack of access to things like limited documents. It is very hard to get it at an early stage and timeliness is something that comes up again and again. When we talk about CFSP, for example, I know that most of the scrutiny overrides come from the Foreign Office and most of those come during the recess. Having said that, it is a little bit of a cop out to say these decisions have to be made very quickly. In some cases they do, in things like the Arab Spring, but in others when it comes to things like the renewal of mandates for CSDP missions these are on the cards months in advance. The mandate expires. The discussion might come down to the wire in terms of understanding what the British Government’s position is and being able to ask questions like, is the EU approach to this area policy wise broadly in line with British interests? Is value being added in some way? These are things that perhaps the House of Commons could be a little bit better at doing. Frankly I think empowering the Foreign Affairs Committee to do that in a more systemic way—they do, of course, do some scrutiny on this issue but it is very much up to whatever the interests of the members are. They are, as far as I know, undertaking an inquiry into the future of the EU. The Development Committee did one at the end of the last session on EU development policy, but it is very ad hoc and part of the problem is that this is all linked to the discussion of at what point you influence the decisions.

One thing that would make such a massive difference would be simply to have the relevant Minister coming in ahead of the Council meeting, and not only that but on a regular enough basis to inform the committee, whether this one or the Foreign Affairs Committee, what is this on the agenda. That is absolutely critical in terms of making sure that Parliament has its voice heard in those sorts of discussions. In many ways the CFSP and CSDP represent the crux of a lot of these issues that we have been talking about and it is a little microcosm of a real weakness in a system that focuses so much on documents.

Chair: Good, thank you very much.

M ichael Connarty: I do not know if Dr Smith wants to say anything but I would refer people back, even my academic colleagues, to a session with Geoff Hoon when he was Defence Minister under the previous Chair, before myself, who basically told the Committee it was none of our business, that is not how Government ran things like defence and common security. It was nothing at all to do with us. It seems today now it is all to do with Parliament. At least it has moved on a little from then, not far but it has moved on a little.

Q138 Chair: Moving on to another subject, but just jogging back as well at the same time, I have here the rules that are laid down regarding this question of limited documents. Without going into great detail, under the rules it says, “The Committee cannot publish or comment directly on any limited documents shared with the Committee in a way that puts the detail into the public domain but they will use the information to inform their overall scrutiny of a proposal”. There are other rules that you may or may not be aware of. I presume you are, but the question I am interested in is whether in fact limited restrictions are effectively overridden by the other Member States? Is there any instance that you have where something is described as limited, and they may get it, but do they use it and do they put it into the public domain in other Member States? Because
The question is how far you try to insist Dr Smith: ever going to be possible?

committees and also their role in scrutiny. Commons select committees operate with almost departmental select committees have the option of closing part of the committee and meeting in private and I would expect that this is what they do if they discuss limite documents.

Q139 Chair: In a nutshell, the means of using the limite procedure is to keep information in the committee and prevent it from getting public distribution. But, of course, from a parliamentary perspective, if that of view is that it is so important to the national interest why should we do what the Government wants? That is part of the question.

Dr Auel: Those are two different issues whether Parliament has access to them or the committee has access to them, or whether the committee then makes that information public in a second step. Dr Auel: If you would be kind enough, if you have a moment between now and when you publish your report, to get some information on whether limite documents are put in the public domain, even though there is an attempt to impose the limite restriction, that would be very helpful.

Q340 Chris Kelly: I want to move on to this Committee’s relationship with departmental select committees and also their role in scrutiny. Commons departmental select committees operate with almost complete autonomy, is full mainstreaming therefore ever going to be possible?

Dr Smith: The question is how far you try to insist upon it happening in which case it is not going to be possible. If you commit it so has autonomy versus trying to create a system whereby more of the departmental select committees feel that there is benefit in scrutinising European policy. The one that is regularly cited as engaging in best practice is Environment, Food and Rural Affairs for two reasons. One, because of the nature of the policy areas that have been European competencies or European level decisions for many years and the fact that Anne McIntosh is a former MEP and does have an interest. It is probably not sensible to say every issue has to be mainstreamed, but looking at ways of talking to chairs of departmental select committees and assessing how far they might be willing to take ownership of more policy and think through the European dimension of policies in their own inquiries. If you have policies that are intimately linked with European legislation and where co-operation with other member states and/or with European institutions makes sense then one ought to be able to make a case to the departmental select committees that it does fall within their own remit and that it would enhance what they are doing, and not simply be held above them. Dr Huff: An example is that the Dutch system is fully decentralised but the Dutch system brings up the question of resources. They have been decentralised since 2006 when they brought in a system in which departmental select committees are autonomous and are fully responsible for deciding their own priorities, rather scrutinising European policy in their own areas. But it is very resource intensive and they have had to overhaul the way that their staff operate. They have a cross-cutting EU staff who can deal with all these issues and who ensure there is coherence in the scrutiny system but it is a question of trade-off. The key question is how much the Commons is willing to put into the system and how much they are willing to radically overhaul it.

Dr Auel: I think it is not just a question of how much standing committees are willing to invest. There is again very little empirical data on this but to give you examples from the Finnish Eduskunta where the standing committees are also very involved, in the committees of commerce or environment EU issues take up 60% to 70% of committee time. In others, like administration, legal affairs or transport and communications, between 40% and 50%, so they get very invested in EU affairs. You can get a similar level of engagement either by formally making committees responsible for European affairs such as the German Bundestag has done and in the Finnish Eduskunta, they are constitutionally obliged to provide an opinion on European documents to the European Affairs Committee, or you raise the attractiveness of engaging in EU affairs for standing committees, i.e. you give them ownership. Simply investing a lot of work to then give an advisory opinion to the European Affairs Committee is probably not very attractive, which is why in a number of Parliaments where the standing committees are very involved they will have the option of drafting resolutions, as their own responsibility in their area, which is then voted on in the plenary. They have ownership over the issues and they do not just report to or help the European Affairs Committee.

Another way that Parliaments have now tried to raise the awareness of standing committees for EU issues is by decentralising the subsidiarity question, the early warning system, so it is now standing committees that go through all of the documents in their area and check them for subsidiarity and proportionality issues, which, as I have explained earlier, I do not find very effective with regard to influencing the European legislative process but which is a mechanism of making standing committees more aware of the documents that are coming in.

Chair: Could I just come in on that and say in the last 24 hours I have had the Chairman of the select committee say to me, “Oh, we got your request for an opinion on the specific subject”, which by the way is of extreme importance to the UK’s own Parliament and he did in fact arrange for an opinion to be devised. He looked at it and said: “The advice I have got isn’t good enough”, and he sent it back again. Of course by that time with the consequence of delay it may well turn out that we get it in a month’s time and it will be far too late and everything will have happened. There are serious problems in relation to giving departmental select committees complete control over it because they have so many other things to do.
Looking north of the border, is the Scottish Parliament rapporteur system a potential compromise and what are the potential advantages and disadvantages of that approach?

Dr Huff: None of us are experts on the Scottish system but we work with people who are. It is perceived as having been fairly successful in encouraging more interest in European affairs. It is important to note that that is seen to have been part of the discourse in Scottish Parliament from the very beginning or that there were quite a few people who were very interested in ensuring that Scotland had a close link and was very good in areas in which it particularly interested, like fisheries and things like that. The current situation in Scotland aside, it is perceived as having been reasonably successful.

Part of the problem with a rapporteur system though is that it is effectively dumping a whole load of extra responsibilities on one or two MPs that is a very difficult sell. It is hard to then generate interest for the rest of the committee. This is also something that they have tried in Ireland and they have had some problems with attempting to generate more interest from other people in the committee, in various committees. It needs to be accompanied by a fairly effective system of development of strategic priorities. I know that in conversations with the Irish they have said part of the problem is effectively all this stuff gets dumped on the rapporteurs and then we wind up scrutinising things that the rest of the committee are not that interested in. There is no way of streamlining it to ensure that we are getting information on particular dossiers, or issues that the committee might have some enthusiasm for. It is a compromise and it is something that is not particularly resource intensive but I am not sure how effective it would be in the absence of more widespread interest and enthusiasm for European scrutiny.

Chair: Could I just add to that that the Liaison Committee has considered this and has given a report on it? They have indicated that it would regard it as a good move if rapporteurs were appointed because it means that at least there is a proper contact between the select committee and our Committee and that will enhance their role because it is quite clear that they cannot monitor everything, but we do and we do it comprehensively by examination of documents. They then can be alerted. Even if there are difficulties in giving them that opinion within the timeframe of their own interests and their own decisions to discuss certain questions—because

I agree with that very much, but the Government’s negotiation position on a particular document, then I would guess that the ad hoc committees would serve, involving a larger number of MPs in the process. However, if it is more about an in-depth debate of European documents and the Government’s position then I would probably argue that a permanent membership where members are able to develop expert knowledge on specific European areas would, I guess, be the better choice. I might not be the best judge on the question of how to involve a wider membership—I wonder how the current system involves a broader part of the membership of the House because they get to serve on one committee. I do not know how often.

Chair: Can I tell you they are put on by the Whips and they may not have the slightest interest in the subject?

Dr Auel: Which would suggest that the current system is not all that helpful in involving a broader part of a membership. This takes us back to the importance of involving the standing committees, the departmental select committees. That is the way forward, either in conjunction with the European committees or possibly instead of the European committees.

Chair: That is raising an enormous question—

Dr Auel: I know. Chair:—if you thought that it would be preferable, or even a matter for consideration, as to whether or not the departmental select committees could deal with the whole range of matters that are within the framework of the European legislation. On its basis of experience and from what we are hearing from other Members of Parliament, it would be way beyond the capacity of the departmental select committees and could become quite dangerous because it would mean that matters would simply not be properly considered.

Michael Connarty: There is maybe the completely different view that they would—

Chair: I am asking the question rhetorically.

Michael Connarty: When they see the important matters that are in those committee’s remits that have a European dimension they might realise that they have been wasting a lot of the time dealing with things that are not as important. That is one of the problems, that there is already a certain blinkered view that Europe is somebody else’s business.

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Q143 Chair: Moving on, regarding European committees, how effective do you think the Commons European committees are at involving the wider membership of the House in debate on the most important European documents? Do you believe that it would be more effective if European Commons committees had a permanent membership to develop members’ familiarity with the subject matter? Finally, which approaches across Europe are, in your opinion, most successful in involving the widest cross-section of members in the scrutiny process?

Dr Auel: It depends again on what the rationale for the debate in the European committees is. If it is discussing the Government motion, i.e. the Government’s negotiation position on a particular document, then I would guess that the ad hoc committees would serve, involving a larger number of MPs in the process. However, if it is more about an in-depth debate of European documents and the Government’s position then I would probably argue that a permanent membership where members are able to develop expert knowledge on specific European areas would, I guess, be the better choice. I might not be the best judge on the question of how to involve a wider membership—I wonder how the current system involves a broader part of the membership of the House because they get to serve on one committee. I do not know how often.

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they are not confined to European documents by a very long way yet—the impact of the European legislation on the work of that committee is enormous, which is why, as a way of dealing with it, the idea of the rapporteur appears to be gaining some traction.

**Dr Smith:** If I could just come back on the question of rapporteurs and also taking your other three questions almost in reverse order, the system that seems recently to have been best at engaging the most members has been the Dutch system. They call it decentralisation. The buzz word in the UK seems to be mainstreaming, actively trying to get all of the sectoral committees to be looking at the European dimension. That followed the no vote in the constitutional treaty referendum in 2005. It did not just come after Lisbon. There was a sense of, “Hang on, we appear to be disengaged from the people. We were all pushing for a yes vote. What went wrong?” The nature of the debate in the Netherlands changed but you have a sense that decentralisation has worked because it has been picked up by the committees and they were willing to do that. As K Atin said earlier, you need to find a way of making select committees feel there is a reason for looking at Europe. It is not another job imposed from the top but something that could make a difference. There are many things linked with Europe that the departmental select committees could be looking at—they might be more useful than what they are looking at. There needs to be a two way process so it is not simply saying, “Right, the European Scrutiny Committee will devolve lots of stuff to the select committees”. There needs to be a process, working probably through the Liaison Committee, of looking at areas that could be picked up by the departmental select committees. My sense from what I have heard is that the European committees are not terribly helpful and having people stuck on because the Whips want them to be there is not necessarily going to lead to useful scrutiny or terribly productive engagement. Having institutionalised European committees for the time of a Parliament could be beneficial in terms of generating and developing expertise, but as a half way house I would agree that a rapporteur system might be the most effective way of trying to link in the select committees and the European Scrutiny Committee.

**Q145 Chair:** Would you believe that one of the difficulties in distinguishing between the provision of information and sifting documents on the one hand and the fact that decisions can yet be taken in the Council of Ministers whatever a committee recommends by way of provision of information raises another question, which the present Home Secretary addressed, with some prompting from some others, a few years ago. It was the idea that where there was a sufficient quorum in the House of Commons, and it would have to be quite substantial, to say we believe that this issue is so important—it has to be recommended by the European Scrutiny Committee for debate as being a matter of importance—the Government takes a view that it should go through but we are not sure about this and therefore put it to the floor of the House. Then devise a procedure whereby if, for example, I have seen a figure of something like 100 members or 150 members who said they thought in a motion that was put down that that matter should then be subjected to a free vote and the House of Commons should decide whether that matter goes through, that that is something worthy of consideration. At the back of a lot of people’s minds, in relation to permanent membership of committees and the whole role of Europe in the context of our national Parliament, is the sense that, yes we scrutinise it, yes we do a lot of sifting, yes we have debates, yes we go on the floor of the House, but what is the end result? And do we have a decision which is taken by the national Parliament irrespective of what the Government wants to do itself? In other words, who is controlling the legislation and does Section 2 mean that you have to accept whatever it is that is decided, whether or not your Parliament likes it or not? What do you think?

**Dr Smith:** This is putting on a more theoretical or abstract political science hat, if one wants to foster a strong Parliament that stands up to the Government then, yes, bringing it on to the floor of the House if there is sufficient weight of opinion would be absolutely the right thing to do. In response to K Atin’s point earlier about, “Well there’s not really very much going on in terms of plenary session”, the three that are the most memorable have been the Backbench Committee vote on the referendum last October—

**Chair:** For which I did the draft of the resolution you were happy.

**Dr Smith:** I am delighted to hear it. The EU budget debate last month and then the emergency debate that you brought before the European Council on the Fiscal Compact Treaty so there are ways in which bringing things to the floor of House, apart from anything else, bring the issue under much greater public scrutiny and bring it to the attention of a far wider group of people than just looking at things in committee whether it is a departmental or a European Scrutiny Committee.
Q146 Michael Connarty: I just want to go back slightly, how important in the—whatever you call it—centralisation, decentralisation or mainstreaming is the ability of the committee to have a resolution that it can then put down? If it is a talking shop and nothing ends up in another forum like the floor of the House that it has to be debated and either supported or negated by the Government, which they still have the ability to do, at least the Committee would appear to have some teeth if the committees have an ability to have a resolution. Maybe that has been attractive to select committees if they are not just going to produce a report, they are able to produce formal resolutions on the topic that have to be taken to the floor of the House.

Dr Auel: I would make that point very generally. I cannot think of another scrutiny system where the opinion by Parliament is not formulated by Parliament. Where it is the Government who puts down the motion in the committee and then can at least in theory complete disregard that debate and put down a different motion on the floor of the House where it is usually voted on without any further debate. Whether it is the European committees or the departmental select committees that would be a very important first step but I also know that this has been on the agenda a few times and that this is not an easy topic for the Government. For me, that would be the most important and that would give whatever committee, whether it is the European committees or the departmental select committees, a greater ownership and also make attendance and membership more attractive if they had the feeling that they were having an impact.

Dr Huff: Linked to this as well is the issue of having Ministers, whether to this committee or ideally to departmental select committees before Council meetings, come and explain what is on the agenda and what Britain’s position is. Most Parliaments do have it, even non-mandated ones just as a matter of course but Britain much less so. It is much more ad hoc, if at all.

Q147 Chair: I am sure you will appreciate that the whipping system is extremely important in this context because people may feel that there is something that should be resolved by Parliament as compared to Government, but if Government says that it wants to insist on its position and then whips people accordingly then the question is are people going to rebel or not. It is interesting, Julie, that when you mentioned the three instances each one of those was effectively a rebellion because both on the referendum of the 81, on the budget itself and subsequently on the urgent question it was simply because I, and/or others, had decided that we were going to take a stand and that is what happened. The reality is that whipping systems do ultimately have a huge impact.

Dr Smith: I was going to come back to something quite similar that there is a question of how strong the Government is versus Parliament in practical terms as opposed to formal terms, that a single party Government with a large majority can put up with Back-Bench rebellion then it probably does not matter, a Coalition Government is obviously in a somewhat different position. The scope for influencing the outcomes differs very much policy to policy according to whether it is typically a coalition system or not. The UK until May 2010 made it quite difficult to see how Parliament could stand up to the Government and say, “We’re not doing what we’re meant to be doing as the payroll vote”. There is a bit more scope for it with a coalition but it obviously depends how much is enshrined in a Coalition Agreement and then, if Government still has the ability to do, at least the Committee would appear to have some teeth if the committees have an ability to have a resolution. Maybe that has been attractive to select committees if they are not just going to produce a report, they are able to produce formal resolutions on the topic that have to be taken to the floor of the House.

Q148 Mr Clappison: It is a follow-up question to a lot of what we have been talking about. What role do you think the Government, Parliament and the media should play in improving the quality of public debate on Europe?

Dr Auel: This comes back to what you said at the very beginning because there is only so much Parliament can do to reach citizens or the general public directly. There are a number of issues here. First of all, when you do address the public directly, what kind of public are we talking about? Are we talking about the general public or very specific expert publics? With regard to both there are changes one could not possibly make to the information provided on the website depending on who one wants to address. In the end most citizens and the general public do not get its information on politics from the parliamentary website and streaming committee meetings is all well and good but most people do not have the time to watch them. Citizens experience what kind of public are we talking about? Are we talking about the general public or very specific expert publics? With regard to both there are changes one could not possibly make to the information provided on the website depending on who one wants to address. In the end most citizens and the general public do not get its information on politics from the parliamentary website and streaming committee meetings is all well and good but most people do not have the time to watch them. Citizens experience political cultures through the media and so the question is, how does one, firstly, interest the media in European issues and also in European policy issues not just the old pro/con integration debate, and secondly, how does one interest the media in parliamentary activities on debates? Unfortunately I do not have a very nice catalogue of how to do that “yet”, hopefully, because I have just started a research project on where we want to investigate how the media report on Parliament and what makes Parliament newsworthy.

Dr Smith: I was going to come back to something quite similar that there is a question of how strong the Government is versus Parliament in practical terms as opposed to formal terms, that a single party Government with a large majority can put up with Back-Bench rebellion then it probably does not matter, a Coalition Government is obviously in a somewhat different position. The scope for influencing the outcomes differs very much policy to policy according to whether it is typically a coalition system or not. The UK until May 2010 made it quite difficult to see how Parliament could stand up to the Government and say, “We’re not doing what we’re meant to be doing as the payroll vote”. There is a bit more scope for it with a coalition but it obviously depends how much is enshrined in a Coalition Agreement and therefore there is a little bit more flexibility for MPs to vote as they feel is appropriate.

Chair: I am sure we can discuss this much more but, James, would you like to ask what is likely to be the last question?
and are willing to take the time to understand how the European Union works and how that links back to this Parliament but it is too easy for parliamentarians to say, "The media don’t like Europe, I don’t think my constituents like it very much". Is it Peter Bone who talks about people down at the Dog and Duck and what are they talking about and they want to pull out of Europe? There is a danger that there is a level of generality of discussion that is almost lowest common denominator politics rather than parliamentarians saying, "Europe matters and here is why it matters", and engaging in informed debate that could help educate the public and be picked up by the media because it is taking the debate forward rather than speaking at the level of generality. Why is it the level of generality? Because that is what so much of the print media, in particular, have picked up on. One of the things that was coming through in the evidence of the Leveson Inquiry was the idea of editorialisation. How difficult it is if you pick up a newspaper now to distinguish between the editorial, the particular biases of journalists and factual information.

Q149 Mr Clappison: To be fair to Peter Bone I happen to know that he is an MP who is extremely conscientious about knocking on his constituents' doors and finding out what they are concerned about. I am now sure how often some of our Members of this Committee talk to their constituents so much. There is a real danger that the whole level of debate is dumbed down in part not because Peter Bone does or does not talk to his constituents or any of the Members of this Committee talk to their constituents so much as the media do not give useful insights into what is going on. So much of it depends on the views of journalists rather than hard facts. If we engaged in discussions that were based a little bit more on hard facts and then debated the merits and demerits of the law or the economic situation rather than impressions and perceptions which—

Dr Smith: It is not a question of whether or not he talks to the constituents so much. There is a real danger that the whole level of debate is dumbed down in part not because Peter Bone does or does not talk to the constituents or any of the Members of this Committee talk to their constituents so much as the media do not give useful insights into what is going on. So much of it depends on the views of journalists rather than hard facts. If we engaged in discussions that were based a little bit more on hard facts and then debated the merits and demerits of the law or the economic situation rather than impressions and perceptions which—

Mr Clappison: We tried very hard. I took part—I did not always get called—in every debate, attended every debate on the Lisbon Treaty on every clause and the way in which it was structured was an attempt to try and suppress detailed debate of the Bill. But to take, for example, our main broadcaster, the BBC, it showed a pitiful interest in it. I will put that to the BBC—

Chair: We are trying to get the BBC to come to this inquiry and it is an interesting reflection on the BBC that we are still having to have discussions about who would come and how they would do it because there are some difficult questions that they are going to have to answer. It is the attitude and who they put on, how they arrange the programmes and the extent of the interest that they take in a matter, which you are indicating from your interest in this subject, you recognise as being of great importance to the workings of our democracy. We have now covered as much ground as we need to this afternoon. I would in conclusion like to say how grateful we are to you for what has been some very original analysis, quite extraordinarily good. You have come up with some very interesting answers to some very important questions. Thank you very much indeed.
Wednesday 16 January 2013

Examination of Witnesses

Witnesses: 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, gave evidence.

Q150 Chair: Chairman of the Liaison Committee—Chairman of Chairmen—welcome this afternoon. We look forward very much to your thoughts on the question, which has already to some extent been looked at by the Liaison Committee in general. I will ask the first question as follows: what is your view of the M inister for Europe’s comment that departmental Select Committees need to “take more seriously their strategic responsibility” for scrutiny of European matters? The Liaison Committee memorandum suggests that there is an additional and higher bar that needs to be passed before Select Committees commit resources into inquiries on European issues. What factors create this bar, and should they not be outweighed by the direct effect of European-level matters? The Liaison Committee memorandum suggests that there is an additional and higher bar that Select Committees need to “take more seriously their strategic responsibility” for scrutiny of European matters? The Liaison Committee memorandum suggests that there is an additional and higher bar that needs to be passed before Select Committees commit resources into inquiries on European issues. What factors create this bar, and should they not be outweighed by the direct effect of European-level policy on the United Kingdom?

Sir Alan Beith: Let me first say, by way of preface, that I am very glad to be accompanied Keith Vaz, the Chairman of the Home Affairs Committee, and David Davies, the Chairman of the Welsh Affairs Committee, both of which in different ways have European matters impinging on their Committee’s work. Of course, I am also Chair of the Justice Committee, of which that could also be said. Basically, I agree with David Lidington’s comments. Perhaps they slightly underestimate the amount of work that is already going on, and has been for considerable time, particularly in those Committees whose policy area is dominated by European decision making—Agriculture and Fisheries being an obvious example. In general, I agree. Something of an ambition of mine is shared with him, which is to get Committees more efficiently engaged in the process. You have referred to an additional hurdle, an additional barrier. The barrier is this: unless you have been able to establish that something 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. That has led me to a lot of discussion with David Lidington and with the UK Permanent Representative in Brussels about how Select Committees can be in what I would describe as early access to the information. Do either of the other Chairmen have any views to add to what Alan has said? Could I ask David Davies first?

David T. C. Davies: I would agree with you and the Minister. We need to be involved in issues that come out of the European Union, but we need to get much better warning of issues that are going to affect us. By way of example, we were in Brussels last year some time in September, and discovered more or less by chance during a meeting that Swansea was not going to be TEN-T port and was therefore ineligible for funding. This is not an issue perhaps of direct interest to anyone here except for one Member. The point is, had we known that previously, we could have lobbied the Government or the European Union to try to make sure that Swansea was included, but we did not know that. This is something that we would all agree on: the information is not fed down to us in time. Keith Vaz: I agree with my colleagues, with this caveat: the lead Committee on European issues ought to be European Scrutiny, because I would imagine that you would have the expertise to be able to deal with first of all, the very short notice that everyone is given to look at these documents. And we really have to sort this out. I am casting my mind back to when I was Minister for Europe. I cannot believe that you only get to know about these things right at the last minute as Ministers, and therefore you send it off to
Parliament. I can remember on many occasions having to sign off things to go to the then Chairman of European Scrutiny with very little notice. The notice point should be taken by all of us. This is a serious issue that needs to be addressed and Government needs to get its act together.

Secondly, where departmental Select Committees can help is by offering opinions on particular areas. We have not done enough work on European issues because our agenda is so crowded with dealing with topical issues to do with police, immigration and other issues of that kind. We are about to embark on an inquiry that looks at the European Arrest Warrant and the opt-outs, as you are as well. This is a really good opportunity for European Scrutiny to work with Justice, Home Affairs, Welsh Affairs and all the other Committees and present a united front on Parliament’s behalf. The worst thing is everybody doing things separately. This does not help. Through our Clerks we should structure this well. We have the advantage of Mr Clappison on Home Affairs and he is, in a sense, our representative on Earth as far as the European Scrutiny Committee is concerned.

Chair: I hear.

Keith Vaz: Whenever we stray or forget something, Mr Clappison is there to remind us that we are straying or we have not spent sufficient attention on the subject and then we jump to attention and start looking at issues. As far as Parliament is concerned, it should be your Committee. Where we come into it is by offering opinions on departmental issues, and it should not excuse us from our responsibilities. Mea culpa on my part; we have not really concentrated on this in the last two years. We need to do more.

Chair: One very quick thing: today we have had a very detailed report on the whole question of opt-outs, which will be made available in due course. In fact, very detailed report on the whole question of opt-outs, which will be made available in due course. In fact, very detailed report on the whole question of opt-outs, which will be made available in due course. In fact, very detailed report on the whole question of opt-outs, which will be made available in due course.

Q 152 Michael Connarty: Chairman, this is a unique occasion for us in these kinds of inquiries. They have been going on for a long time, as we started to disengage from Europe as a Parliament, quite frankly, under the Secretary of State for Environment, Food and Rural Affairs, with the change of Standing Orders. I watched it happen when I was sitting in the Chair. What we have here is: Keith, a very well-respected senior Member and former European Minister; Sir Alan, a well-respected Member of the Liberal Benches, with tremendous experience; and a young fresh face from Davies, not a man to hold back in his opinions. This is a unique time to have a dialogue, rather than an evidence session where we try to ask the tricky questions and people try to answer them without making a fool of themselves. I really want to have a dialogue about this lack of engagement with Europe.

Since the Lisbon Treaty, power has changed markedly. I keep repeating what I said in the speech I made when it went through: it was a tipping point. It changed the forces in Europe: the Commission, the Council and the Parliament of Europe are now where the power lies. I always explain this in geometrical terms; we are the little bit in the rhombus down at the pointed end, somehow trying to resolve the forces that give us some influence. Our Parliament has failed to do that in any meaningful way. The power has shifted to the European Parliament, which is correct in democratic terms, but we are left out of it. We have to ask how we engage all the powers of the Select Committees to reengage with Europe?

From my point of view, why are Members of Select Committees not going to Europe more on their issues, which are being dealt with or even coming from the Commission and the work programme, and engaging with European Parliament face-to-face on all these issues? We do not have the time on the European Scrutiny Committee, as Keith has said, because of the speed of turnover. We have to try to hit all the balls back over the net, in the right direction. It seems to me that Parliament and the Committee structures have not re-tooled themselves to deal with the new Europe. Do you think there is some way in which the Select Committees can help us, as a European Scrutiny Committee, to move back into the field of play, where the power really lies, which is really between the Council and the European Parliament now? Our job is to look at our Ministers all the time and what our Government is doing, but surely Select Committees have a role to play in re-engaging with the modern Europe in a way that I do not see happening?

Sir Alan Beith: I think that role is there. I do not think you should discount what happens now. My Committee has just done great deal of work on the European Data Protection Directive and regulation, and the EU Emissions Trading System was looked at by the Energy and Climate Change Committee. All this kind of thing does happen, but there is a great deal more than can and should be done. In order for it to be done, and done effectively, engagement has to start at quite an early stage. Frankly, I do not think it is something that the European Scrutiny Committee can do. You have got your work cut out in overseeing the process and dealing with situations when things are coming up at far too late a stage.

A departmental Committee can get it at a much earlier stage, as policy is emerging from the Commission and being tested against national Governments in other areas of Europe. By an evidence process, we can get light thrown upon it. Take the example of the work we did on the Data Protection Directive. We had chief police officers, people from the business community—both IT businesses and other businesses that would be affected—in front of us, and they became more aware of the issues. Some of them were already aware and then they told us a great deal. In this process, you engage with Commissioners and make them real, why we think it is framed in a way not suited to UK conditions. You engage with Ministers and push them into using their Council of Ministers opportunities to challenge things. You engage with other organisations which operate across Europe in the relevant field to some extent. If you do all that at an early enough stage, you can change the way policy is developed. If you wait until it is a hard and fast legislative proposal, and it is going to a European legislative Committee, then you have left it far too late.
Q153 Michael Connarty: Can I add a little question, then? Did you engage with the equivalent Committee in the European Parliament?

Sir Alan Beith: I engaged with several Euro MPs and with at least one national Parliament Chair in a related field. That made me think we ought to do that rather more systematically. I was really using personal contacts with Euro MPs and Chairmen who I meet at other events, as I am sure Keith does: Home Affairs and Justice Chairs' meetings. I think we could do that rather more systematically.

David T. C. Davies: Mr Connarty asked if there is anything practical we can do to better engage with what is going on in Europe, and I think there is. I will preface it by saying that, obviously, all of us in Parliament know how legislation is passed here: First Reading, Second Reading, Legislation Committee and back to the Report stage and so on and so forth. We all know that there are specific individuals that we can talk to at each stage of the process if we want to influence legislation going through this House. I am not convinced everyone could say the same about legislation that is developed in the European Union. Both I and the Member for Llanelli, Ms Griffith, when we were in Brussels had a basic guide to how things work and COREPER and the negotiations that go on between different nation states and the rapporteur from the various Committees and so on and so forth. I really still feel that I could do with a lot more information about it. I would not like to sit there and try and explain how the system works, let alone name individuals I could go to at each stage of the legislative process in Europe. The answer to the question is: I almost think we need—I hesitate to use the phrase, “an idiot's guide”—but certainly a good basic understanding of how legislation is developed within the European Union, and perhaps there is a role for the Committee here to put on a short, concise presentation for Members who would be interested. I certainly would be, and I think many on the Welsh Affairs Committee would.

Q154 Chris Heaton-Harris: I was wondering, following on from that, whether you feel that we could use the expertise of our Members of the European Parliament in a better way than either this Committee or on departmental Select Committees.

Sir Alan Beith: I am sure we could. The rather standoffish relationship that this House has had with MEPs over the years, for a variety of reasons, is undesirable and loses opportunities to exercise UK influence in Europe and to improve the quality of what is going through. It is crazy if we get in a situation where Members of Committees here and those on the European Parliament, simply because they have not consulted each other about it, are moving in different directions on the same issue.

Chair: I will just add that we have had just recently been—and we do every now and again go—to Europe, to the European Parliament, to talk matters through with them. I have just noticed what Michael's face looked like as I was making that point. The truth is that it was not a very satisfactory arrangement. It could not have been worse really, because people were coming in and out; they were in for two minutes. We were trying to have a dialogue with them about really important questions, and I have to say, quite bluntly, that the issues, which we went over there specifically to try to address, were not really being given the attention from the Members of the European Parliament.

Q155 Michael Connarty: I have got to say that the level of disengagement was quite frightening compared with how it was, probably pre-Lisbon, quite frankly. From my own European party, only one turned up for half an hour. You could rely on a dozen in the past coming for an hour or more and really having a dialogue. One of the suggestions earlier, when we were changing this Standing Order, was that we should have debates in Westminster Hall in which European Members of Parliament are invited to participate, like a European Grand Committee. It didn’t fly, but it is interesting that the German Parliament allows its MEPs to come and participate in debates on European matters on the floor of the Bundestag. Do people have views on this question of how we engage? I would like to get some thoughts from the former European Minister.

Keith Vaz: I am not sure I am quite taken by that suggestion, having taken so long to get to Westminster, that we give other people the opportunity of being in the debating hall. It would be a problem for me. One of the problems is we do not get enough time on the Floor of the House itself to discuss European matters. It is a point I know you have made in the past, Chairman, and we have all made at the pre-summit debates that we used to have—which is now, of course, part of Backbencher time. That used to be a standard debate, opened by the Foreign Secretary, closed by the Minister for Europe, and you knew before a summit Parliament would be consulted. This only happens because of the goodwill of the Backbench Business Committee. I think we are at fault. The Clerk is behind me—are we allowed to beat up Clerks under Standing Orders, or maybe he could beat me up for not thinking of this before? We actually have not been over to Brussels for the last two years, partly because the bidding process through the Liaison Committee is so incredibly bureaucratic. Clerks start by telling you to bid; you then bid; you then look at the cost of everything; you then go back to the same Clerk who then says yes or no. With the greatest goodwill of the Backbench Business Committee. I think we are at fault. The Clerk is behind me—are we allowed to beat up Clerks under Standing Orders, or maybe he could beat me up for not thinking of this before? We actually have not been over to Brussels for the last two years, partly because the bidding process through the Liaison Committee is so incredibly bureaucratic. Clerks start by telling you to bid; you then bid; you then look at the cost of everything; you then go back to the same Clerk who then says yes or no. With the greatest goodwill of the Backbench Business Committee. I think we are at fault. The Clerk is behind me—are we allowed to beat up Clerks under Standing Orders, or maybe he could beat me up for not thinking of this before? We actually have not been over to Brussels for the last two years, partly because the bidding process through the Liaison Committee is so incredibly bureaucratic. Clerks start by telling you to bid; you then bid; you then look at the cost of everything; you then go back to the same Clerk who then says yes or no. With the greatest goodwill of the Backbench Business Committee. I think we are at fault.
acknowledge that they are a Parliament of a country, as opposed to the others, because clearly it is not a country. We need to do more, and I think it is a very good suggestion to have that kind of interchange.

Q156 Nia Griffith: Are you suggesting then that any travel to Brussels should be regarded like travel within the UK, and therefore not be subject to the bidding process?

Keith Vaz: Absolutely. I was the Minister for Europe who signed off the original one visit to Europe every year to encourage people to deal with enlargement countries, so we could have gone to countries like Poland, Romania, Bulgaria. It was extended by Robin Cook, I think, to three a year. This is just not taken up, because of course we are all fearful that we will be top of the wrappers list, so nobody wants to travel. I think this is a mistake. If we want to engage more, and find out what they are up to, we need to do more. Following on from David’s suggestion, it would be a good idea if the COREPER people would come here and explain to those Chairs of Committees with an interest what they all do, and how it all works. That would be as well as knowing what the process is, we would like to see them. You all see them a lot. I actually do not know who our Permanent Representative is in Brussels. It is one of the most important jobs in the Foreign Office. I do not know who it is at the moment.

Chair: He is called Jon Cunliffe.

Keith Vaz: Right—Jon Cunliffe. I have not met him since I was at the Foreign Office. The fact is they need to come to us as well as us going to them.

Chair: I was supposed to have a meeting with him a few days ago, but it got cancelled. There is a question I would like to touch on with all three of you: however important it is for there to be inter-engagement, which surely is the case, what Mr Vaz is saying with respect to the Liaison Committee or for the departmental Select Committees to bring it back to Michael’s point and your thoughts with the people in the Directorate-General, and the Commission who basically put forward the proposals that we discovered what they were up to. Sometimes, it is not just a matter of the point at which it comes to us as a Committee. Through a little bit more face-to-face dialogue with the Committees dealing with the Justice or Energy Directorate-General, we might prepare ourselves much better for the difficulties to come or even avert some of the difficulties. I totally agree with what Sir Alan said.

Chair: I would very much agree with what Michael said. We are all pretty much in agreement that the avantage— I think that is their language for it—is the point at which it would be most propitious for us to get involved, but there are going to be huge practical problems and there are, as you say, huge departmental boundary questions. There is something else which came up. I thought rather interestingly in the last few days, which was that Steve Hilton, from his fastness in California, made certain remarks about the Prime Minister’s discovering things in the newspapers. He then made another comment, which did not get so much coverage. He said, “And we spend about 40% of all our time in Downing Street on European regulations and European business”. In the big context, the debate about role of the Civil Service, to bring it back to Michael’s point and your point about UKRep and the whole question of how best and the right time at which to engage in this dialogue, is very apposite. It is not just a matter for the Liaison Committee or for the departmental Select Committees or for us as a European Scrutiny Committee: it is also for entire machinery of government, including the Civil Service. Of course, the competence review is going to be looking at these things horizontally as well as vertically. We are at a very propitious moment in discussing this, which is really why we thought it was a good idea to set up a scrutiny into European Scrutiny.

Q157 Michael Connarty: I just wish to say something in support of what Sir Alan has said. I recall under the chairmanship of Jim Hood that we went to the Environment DG, as part of our visit to Brussels. We had a very good process then of going for a couple of days to Brussels and going to see various Directorate-General to talk about things that were coming onto the work programme. We discovered the beginning of the REACH Directive, which grew like Topsy into this massive imposition on all chemicals to be tested etc, and we discovered that by having a discussion at the Directorate-General, that this is what they were up to. The chemical industry in the UK was shocked by what came out, but it was only by going early and discussing the thoughts with the people in the Directorate-General and the Commission who basically put forward the proposals that we discovered what they were up to.

Q158 Stephen Phillips: Picking up on the last piece of evidence we had from you, Sir Alan, you referred to jealousy of particular Departments in relation to portfolios for which they are responsible. You may remember the Liaison Committee suggested that there
might be an increased role for this Committee to seek opinions from other departmental Select Committees, but to what extent, just before we get to that, do you think that that jealousy exists within departmental Select Committees, so that they do not want this Committee referring matters to them for opinions?

**Sir Alan Beith:** I do not think there is any lack of desire from departmental Select Committees on this Committee asking for opinions. That is entirely proper and quite right. It does not apply just to this Committee; it occasionally applies to some other Committees with a general brief as well: if you got to a stage where an individual Committee felt that this Committee was giving opinions on a matter about which its Members knew a great deal less than the Members of the departmental Committee, then you can see where tension might arise at that point. This Committee, very correctly when it sees a need to do so, seeks an opinion from the Select Committee that knows about that field.

Q159 Stephen Phillips: It is really that point. It is the point that under, I think, Standing Order 143, we have a desire from other departmental Select Committees to give us opinions from departmental Select Committees. Both you and Mr Vaz have referred, no doubt correctly, to the expertise on substantive matters lying within those departmental Select Committees. I have to say, my experience, and the experience of the Committee in the past, has been that when we have sought opinions from departmental Select Committees, when we have had them at all, they have been of a variable quality, if I can put it in that way. Given the Liaison Committee’s suggestion that there might be increased scope for seeking further opinions from departmental Select Committees, how do you see that playing out in the future, if I may have Mr Vaz’s view and also that of Mr Davies’?

**Sir Alan Beith:** I would like to feel that certainly my Committee has met your quality standards. You have to take into account that each Chairman is juggling a very considerable workload and Committees do worry sometimes, particularly when combined with things that Governments do that put work onto the programme of a Select Committee, that being asked to do a detailed report on some issue may not fit neatly with that work programme. I think we have to do it. It would be unusual for this Committee to ask an opinion from us, as a Select Committee, on a matter that did not deserve at least some of our attention. Committees should have regard to it.

Q160 Chair: Could I perhaps comment on some of the statistics that we have in our files? We are probably the only people who know how our system has been working in terms of responses. I will just read this out to put it in the record, because it is important. Otherwise everything we have said before is not really going to work if it is not actually functioning in practice. In the past two sessions, our Committee has requested 33 opinions from departmental Select Committees. We are quite sparing about it. Maybe we should ask more, but that is the way it has gone. The Committee requested 11 opinions in session 2012, and two so far in session 2012–13. We have got two outstanding requests from the session 2010–12, both from the Treasury Committee, who of course have had enormous burdens with all the bailout and Treasury matters, though we did regard them as very important opinions, which we were seeking. Responses have been received for nine of the requests made in 2010–12, but none of the requests which have been made in 2012–13 so far. That is the position, for the record. One might, if one were doing a school report, say, “Take note, but could do better.” It is important that we up the game.

**Keith Vaz:** Chairman, if you have examples of Select Committees that do not respond, even if it is the Treasury Committee and bearing in mind their workload, if it is Home Affairs, I think you need to come to us in order to ensure the commitments that we made. Mr Phillips is absolutely right: because of time frame and the time scales that you have to deal with, which are very short, you should respond. If we have not, then I am sorry, but I do not think Home Affairs is on that list of Committees that have not responded. Obviously, we will look at the areas much more carefully. There is a good relationship between your Clerk and my Clerks and if there is a problem we will resolve it. We do want to be able to give our opinion on those areas that concern us. As I have said earlier, we have not done enough on this.

Q161 Chair: You will be glad to know that you are not on the non-responding list.

**Keith Vaz:** Excellent. I have a brilliant Clerk and he is sitting behind me, so I am sure we are not on the list. I do not know whether Welsh Affairs is on it. One of the reasons why we do not go and engage is that whenever we get our programme together, we want to see the Commissioner when we go to Brussels and the Commissioner always has something else to do. We might use UKRep to do more work for us in terms of getting those meetings. I have been left ringing Baroness Ashton’s office and saying, “Can you fix up this meeting?” I am not quite sure that it is my job to do that. Please seek our opinions, and we will give you our opinions.

Q162 Stephen Phillips: I will ask Mr Davies as well. This is a relatively small number of opinions that have been sought in the two previous sessions, in circumstances where we see a very large number of documents, on which the views of departmental Select Committees would be extraordinarily helpful to enable informed reporting to be made to the House. At the moment, Standing Orders do say we are entitled to set the time limit within which we require a response, but that is not being observed. Should we be seeking more departmental Select Committee opinions? Should there be some real recognition within the departmental Select Committees that those responses, albeit in letter form, need to be made in short order and prioritised, in order that the House can be properly informed about the documents on which we are reporting?

**Sir Alan Beith:** Since I do not know about the individual cases in which you have not had a response—and it would be interesting to see some of those details—I cannot say whether there are any
extenuating circumstances. My own view is that a Committee should make every effort, if this Committee has identified something on which a more specialised opinion is needed in the subject area of the Committee; they should get on and do it. They may have serious practical problems because there may be even more time-sensitive things going on, such as a report on a piece of legislation which is coming before the House urgently. That happens in Home Affairs and Justice when you get terrorism legislation, for example. But, bar that difficulty, the Committee should give priority to it and the Liaison Committee has recommended—and I hope the House will soon have the opportunity to endorse—the inclusion of scrutiny of European business as a core task of the Committee.

Chair: Could I just add one other point? Of course, given the process—we have all acknowledged how very much we would like to improve it—and the material that comes to us somewhat late in the day quite often, the question still is this: when we make a request to a departmental Select Committee, it is not just on, “Oh, isn’t it a good idea to look at the question of...?”. It is certainly something of a more serious character that already establish how, for example, the law of this country could or might be changed, and—this is crucial for a departmental Select Committee—on the basis of an Explanatory Memorandum; it is that departmental Select Committee’s own Minister, as it were, with whom they are going to be in a dialogue. Now, if they are not looking at the Explanatory Memorandum on a matter which has such an impact on the daily lives of the voters, then something needs to be done, surely, so that we can get this critical mass properly sorted out. I do not know that we are going to come to an absolute conclusion today by any means, but it is all part of the dialogue, which is why we think this Committee inquiry into scrutiny is crucial for a departmental Select Committee’s own Minister, as it were, with whom they are going to be in a dialogue. As Michael said, it really is a constant issue for everybody, and applies to other countries in Europe as well.

Q163 Stephen Phillips: Mr Chair, I do not want to stop you, but just before Mr Connarty comes in, I wonder whether I can have Mr Davies’ answer to my question.

David T. C. Davies: The answer, Mr Phillips, is that we are not on that list. Because of that, it is rare for us to be asked for an opinion on European matters, and because it is rare, I am absolutely certain that if we were asked we would treat it as an absolute priority. You asked whether the European Scrutiny Committee should be sending out more of these requests. May I gently suggest that probably would not be a good idea because already quite difficult to programme in future evidence sessions. If we started receiving a lot of them then they would not be treated with the priority that they deserve.

Q164 Stephen Phillips: Let us assume that that is right. If the substantive expertise on the various matters, documents, which come before this Committee lies elsewhere, how is this Committee to access that expertise other than through the mechanism of seeking these opinions?

David T. C. Davies: We can certainly offer opinions, but in order to do so we have to set up meetings and possibly cancel other meetings. If we are asked every now and then for an opinion, I am sure we would be happy to treat it as an absolute priority, but if we were receiving requests every week some of the Members of the Welsh Affairs Committee might be suggesting to me that perhaps it is the job of the European Scrutiny Committee to deal with European matters.

Q165 Stephen Phillips: Would additional Committee staff for each of the departmental Select Committees, for example, specialising in reporting to the European Scrutiny Committee— or, indeed, splitting that role; it may not be a full-time role—be of assistance to each of the departmental Select Committees?

David T. C. Davies: In Scotland, there is a system where one Member of the Committee is a rapporteur, dealing solely with European issues. I thought about that. I think if we did something like that we would be opening up a bit of a Pandora’s box, because we could end up with rapporteurs for all sorts of other issues as well. Before you knew it, we would end up with a Select Committee that did not act like a parliamentary Select Committee but something on the European model, which changes the whole role of the Chair—something I am aware of, as I am actually a rapporteur on a European Committee in the Council of Europe. I would be a bit cautious about that.

In the case of Wales, and possibly Scotland and Northern Ireland as well, I assume, we have an additional problem, which is that virtually any issue you are likely to ask us for an opinion on will probably be a devolved matter. Whether it is agriculture, transport or economic development, there will probably be a devolved element to it, in which case some of our ability to get a good opinion to you will depend on the relationship that we have with the relevant Minister in the devolved legislature. That varies a lot, even within the same political parties. Some will deal with us and are very helpful. Some will flatly refuse to have anything to do with us because we are Parliament. That complicates the situation further, and makes it harder for us to get you opinions as quickly as you would like.

Sir Alan Beith: Just on the rapporteur point, can I just explain that the Liaison Committee has recommended that Committees should consider whether this is a tool that would be useful to them to deal with European issues? There is nothing mandatory about it at all, and there are other mechanisms, like having a sub-Committee, or making sure that the staff that supports the Committee has got arrangements within it, to see that there is proper focus on European matters. There are various ways Committees can do it. This is merely one.

Q166 Michael Connarty: There is a Standing Order that says this Committee has the power. We are not doing it because we think it is a good idea. We are given the power ask Select Committees for an opinion. I would take that interpretation that the Committee should reply, and should reply within a time scale that is useful for this Committee—or why would they put it in the Standing Orders in the first
Stephen Phillips: Several heart attacks in the last 30 born, how they get promoted—all this kind of stuff is which will take an inquiry of its own: where they are other. We do not know the mysteries of clerkery, often. Frankly, the Clerks keep in touch with each Keith Vaz: I don’t think so. We must overlap quite Sir Alan Beith: guarding of portfolios by Committee Clerks? Q168 Stephen Phillips: well on this, and we should continue the co-operation of the Clerk’s Department in particular, which also improvement, but it is a standard part of the operation of the European matters, with the staff of this Committee. do liaise with each other, and, particularly on European thought, but what the Committee think. Keith Vaz: To be fair, he was not saying, “Do not write.” He was just saying, “If you write too often, we do not have the resources.” Michael Connarty: He was explaining how difficult it is. Keith Vaz: But if nobody is going to take the extra resources Mr Phillips is offering, I certainly will have an extra person for Europe. Stephen Phillips: I’m going to fund them personally. Chair: Can we move on? Q167 Stephen Phillips: It is a related question. At the moment, as Mr Vaz and Sir Alan will know, there has been very good co-operation between the staff of this Committee, informally, and their staff, in relation to the block opt-out. I just wonder what your views are on whether there is greater scope for that sort of informal co-operation between the staff at 7 Milibank to continue, not only in the context of this Committee and Justice and Home Affairs, but with other departmental Select Committee staff as well and whether that is working well and what more can be done to make it work better. Sir Alan Beith: I think it is always capable of improvement, but it is a standard part of the operation of the Clerk’s Department in particular, which also brings in specialist advisers to Committees, that they do liaise with each other, and, particularly on European matters, with the staff of this Committee. Certainly, we would accept there is always scope for improvement. Keith Vaz: I agree with Sir Alan. It has worked very well on this, and we should continue the co-operation that we have. Q168 Stephen Phillips: I am very new to the House. I am going to ask it anyway: is there any jealous guarding of portfolios by Committee Clerks? Sir Alan Beith: No. Keith Vaz: I don’t think so. We must overlap quite often. Frankly, the Clerks keep in touch with each other. We do not know the mysteries of clerkery, which will take an inquiry of its own: where they are born, how they get promoted—all this kind of stuff is unique, and we do not know. Stephen Phillips: Several heart attacks in the last 30 seconds, Mr Vaz. Keith Vaz: They arrive, Mr Phillips, all in one piece, and we just accept them as they are. The fact is they do have their own mechanisms of drafting the letters in certain ways, etc. Obviously, Mr Cash, Sir Alan, Mr Davies and I will look carefully at what is put before us and put our own opinions forward, but I think they have their own network, their own club, and it seems to be working well as far as the opt-out is concerned. At the end of the day, we need to decide, and I think looking around the table all of us are strong enough to make those decisions. Chair: Speaking for my own Committee, I have quite a lot of Clerks and I have some extremely good advisers, and we are in almost constant contact on all sorts of matters. I think the system from that point of view is fine. What is emerging is that there is some improvement that we are investigating, which we might be able to develop, in the interaction between Committees and ourselves. Q169 Mr Clappison: I think we have already touched upon my question. At the risk of generating auto-criticism as far as Home Affairs is concerned, I will put it again so we are absolutely clear about it: would there be agreement amongst you three as Committee Chairmen that we need to get earlier information about what is planned in the European Union, and do you think that UKRep, particularly, as it has contact in negotiations, is best placed to provide us with that early indication—what some people might suggest as horizon-scanning information about emerging policies in the Commission, and how do you see them doing that? Sir Alan Beith: Yes and yes—that is, more information is needed, and they are the best people to provide it. That is simply based on my own experience as Chairman of the Justice Committee. In all the discussions I have had, on all occasions when I have been to European meetings or gone to see the Commission, the briefing I have had from the UK Rep staff—who are sometimes staff seconded from Departments, of course—and the support they have given has been very good indeed. They have a very clear grasp of what is in the work programme, what is getting some traction from items that are in the work programme, what sort of things are not getting very far because there is resistance either within the Commission or from other member states, and what issues are moving in such a way that we really need to get a grip of them. It is fine to be able to get that information when you have got on the train to Brussels, and gone to the other end and found them in their lair there, but it would sometimes be extremely useful if that information came to us earlier. There is a route by which we do get some help in doing that, and that is of course we have—I cannot remember if there are one or two—House of Commons Clerks based in Brussels, who are also of very great assistance to us in facilitating this process. We use that as well. The core of my argument is that the Government should loosen the reins a little and might suggest as horizon-scanning information about emerging policies in the Commission, and how do you see them doing that?
Q170 Mr Clappison: It follows from what you have said that it depends on the individual Chairman or Committee Member taking an interest, going to Brussels, and asking for themselves. The information does not automatically come to them.

Sir Alan Beith: That is the problem.

Chair: I ought to mention the National Parliament Office, where we have, in this instance, very good communications, who supply us with the eyes and ears information that we need. Quite often it can be very important. Some of the documents are described as limited. I do not think we have got time to go into all that today.

When there is a deliberate attempt to try to block information which is generally available throughout Brussels, but when there is an embargo placed on us when we do have the information—this came up, what, twice in the last year?—on one occasion I had to raise an urgent question, which was granted, because it was so important in relation to whole business of bail-outs and the economic governance questions. That is another issue. Bearing in mind the time and Keith’s own programme, I just wonder, Chris, if you might like to ask the next question?

Q171 Chris Heaton-Harris: Yes. It is quite a simple one actually. We had some, as always, interesting academic input into this process so far, and they raised the fact that the Irish and Dutch Parliaments, and the National Assembly for Wales, have given much more scrutiny responsibility to their subject Committees—essentially mainstreaming of some individual subjects—effectively moving the sifting role away from European affairs Committees. Is there any appetite for that sort of change here?

Sir Alan Beith: It presents certain problems for us; one is the way in which the European legislative Committees are viewed generally as something of a chore that Members have to attend, and perhaps not used to the full. The other problem they present is that, in the Select Committee world, there is an understandable resistance to importing any formal part of the legislative process into the Select Committee, because that always comes accompanied by Whips, who are the last people you want to see anywhere near these Committees.

Now, it may be unrealistic to apply that consideration to some of the European processes that we are describing, but I think it accounts for some of the caution you get on the Select Committee side, of doing what many other Parliaments find it much easier to do: essentially combine legislative and scrutiny functions. We have a quite serious obstacle to that around the majoritarian way in which our Parliament works. We would not want to lose anything of the freedom that we are exercising this afternoon for you to operate as a Committee, as we do, without regard to party considerations.

Keith Vaz: I do not mind. As I have admitted in my first confession right at the start, we do not do enough of this work, because the domestic agenda on Home Affairs moves so fast. We try to keep up, although we obviously never keep up, because it is so fast-moving, but we need to do more. If there is an opportunity to do more then we have to do more. This is an opportunity to do so with the opt-out arrangements. We will look at this very seriously; we intend to go to Poland; we intend to look in particular at the European Arrest Warrant. As part of our inquiry into Turkey being a candidate country, we went to the border of Greece and Turkey, and it was fascinating, because of the immigration implications for our country.

We should do much, much more of this, and hopefully that will help what you are doing; we would not want to cut across anything that you are doing, but we do want to be able to make a contribution. It goes down to the fact that when Theresa May comes before our Committee—Mr Clappison will correct me if I am wrong—there are not many European questions we put to her.

Mr Clappison: No.

Keith Vaz: This is our fault: we should do much more, and we will get the head of UKRep in to appear before the Committee.

Mr Clappison: You may regret saying that.

Keith Vaz: There is always, Mr Clappison, the conscience of a Committee on these issues, and Mr Reckless.

Q172 Chair: There is also the other question about having Question Time, as we used to have in the House, on the Floor of the House, devoted to European issues, because that has been disbanded. That is another way; if you had topical questions attached to that, there may be issues that you could raise that would be relevant to a Select Committee, which could then be asked of the Minister, to try to get ahead of the curve.

Keith Vaz: Yes. I would not be against that. Actually, after the Prime Minister gives his speech in Holland, I think he should appear before the European Scrutiny Committee, since he is talking about European matters, so that he can be examined by you on this one issue. That would mean we do not have to have—

Chair: You obviously have a sense of drama.

Stephen Phillips: And humour.

Keith Vaz: Excitement—I will be first in the queue for tickets. It is not because I want Liaison dominated by European issues, as sometimes it is; it is because when there is something so big, like a big speech by the Prime Minister on issues of this kind, it would be appropriate for him to come here.

Q173 Chris Heaton-Harris: Just one short supplementary to Mr Vaz, if I may: at the moment, while we have not exercised the block opt-out, we are gradually opting in to different Justice and Home Affairs measures. Does your Committee scrutinise any of those on an individual basis?

Sir Alan Beith: We are both involved in this process.

Keith Vaz: We are just going to start. We are waiting for the list, of course, and we have now got the list.

Q174 Chris Heaton-Harris: As we gradually opt-in one-by-one—we have been doing it gradually—over the last six months four or five have disappeared off the list, because we have opted in, and we have referred them to debate in European Committee, because we thought they deserved debate. Have you discussed them?
Keith Vaz: No, we have not, and we should, and we will at the next meeting.

Sir Alan Beith: Your Chairman and I, and the Chairman of the Lords Committee, wrote a rather stern letter to Ministers, because we felt, and I think we probably still feel, that we had not been given sufficient indication of the order and order of priority and general direction of thinking with which the Government was addressing these things. We could waste a lot of time going to things that were not an issue, or we have subsequently found were not really an issue. We really want to know which ones to concentrate on, and which ones to take in what priority order. We need more help from Ministers to do that.

Again, you find what they would feel is a reluctance to give their hand away at an early stage, giving an indication of where their thinking is going—a fact that does not square very well with the fact that Ministers have usually said something in a speech somewhere that gives you a flavour of where they are going. A clearer indication from Government would make it easier for our Committees to tackle this.

Q175 Michael Connarty: Just a very simple question: the Brussels Bulletin, which we get every week, is, I understand, sent to all Chairs of Select Committees. Now, maybe Chairs of Select Committees do not always have the time to read everything that comes on their desk, but surely these wonderful members of staff that are referred to again and again by Mr Vaz and others—

Keith Vaz: Protecting my back.

Michael Connarty: would go through these and point out matters of relevance to the Committee. For example, Barroso’s report to MEPs on the December European Council might contain in it a paragraph that reveals that our people have sat in and heard Barroso say something very significant about where he thinks the policy is going, and you have to read through it to find that paragraph. I often wonder if, in fact, they are used in the way they could be used by every Select Committee, just to inform themselves of the ongoing process referred to where things of significance are beginning to be hatched out in the European dialogue between Commission and Parliament. I do recommend it; I know people who read it.

Keith Vaz: I have not seen one of those. My Clerk has nodded that he sees them very regularly, but I will make sure it is required reading alongside the Leicester Mercury every day.

Sir Alan Beith: Our staff I think would benefit greatly from more help from UKRep staff in identifying—you give a very good example: if Barroso makes a speech—

Michael Connarty: These are our Parliamentary spies: they go to every meeting.

Sir Alan Beith: you have to have read the speech.

Chair: Could I just issue a very slight warning with respect to the reliance on UKRep too much, for this reason: UKRep is—let us get the words out—the United Kingdom Representative: this is a Government body.

Michael Connarty: It is Executive.

Chair: It would be disingenuous for us to believe that, as Select Committees, we could rely on the kind of information which would be volunteered by Government, in the form of UKRep, when we are the people who are supposed to be asking the questions. We cannot ask the questions unless we have the information; we cannot be sure we are going to get the information any more from UKRep than we are from the Government. That is something we might just bear in mind, because that, after all, is why we are here.

Michael is right; this document could possibly be expanded to some extent, to take more regard of the departmental interests. I do not want to put too much of a burden on our NPO, but it is just possible we could consider that as a recommendation, because that would help you to know that you are getting the information from those people who represented Parliament, our Parliament, and who are Parliament’s eyes and ears in Brussels, and not just exclusively rely on UKRep; otherwise we might be making a bit of a trap for ourselves.

Q176 Michael Connarty: My question is an expansion of the question that has been referred to by Stephen about the use of rapporteurs for departmental Select Committees. Certainly, in the early days of the Scottish Parliament’s reactions to matters coming from Europe, I do not think they were very skilled, but they have developed a system of rapporteurs for the various topics. I wondered whether this has been looked at by the Committee. If you think about what the decision was of the change in Standing Orders, it was that two people would be referred to the Committee of Selection from this Committee for every debate in a Standing Committee, and two people would be referred from the appropriate Select Committee. I do not see much evidence of appropriate Select Committee Members participating in the debates when they come to the Standing Committees, to be quite honest, so clearly the aspiration of that change in Standing Orders I do not see realised. We send two people diligently from this Committee, but do not always hear the expertise coming from the Select Committees. I just wonder, if there was a rapporteurs system, whether there should be more than one rapporteur, whether it would be difficult to get one rapporteur to do European matters. Could there be some kind of co-ordination across the House, so that the political parties buy in to this, so that the Whips take this seriously? I get the feeling the Committee of Selection is not always focused on that Standing Order, to which I referred, when they put people on Standing Committees.

Sir Alan Beith: I do not know whether the Committee of Selection checks—it may well do—as to whether that Standing Order has been satisfied in each case, but certainly Members of my Committee have served. Indeed, I frequently find them being taken to serve on both European Committees and Statutory Instrument Committees when I want them at the Committee meeting itself. The process is used to a significant extent, but 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.

Q177 Michael Connarty: Do you think that is sufficient to say it depends on the personalities; it depends whether anyone wants to do it? The duty given to the Select Committees by changing the Standing Order were away from what I thought was the correct structure, which was a permanent membership of all three Committees, thereby training people. That would be 39 people being trained every year, in every debate, in the expertise in these three areas the Committees are supposed to deal with, which we used to have. It cannot be substituted, surely, just by the whim of either the Whips to “share the pain”, as they call it, by putting people on the Committees, or the whim of people on the Committees, because they are interested to go on. Surely, part of being a Member of Parliament is to carry the duty of representing the parliamentary view and taking on the work seriously?

Sir Alan Beith: I was addressing a different part of your question, which is the question of whether a rapporteur mechanism is the best tool a Committee can use to see that its continuous scrutiny of European matters is done effectively; it is not the only way to do it. There is a separate question of whether two Members of the Committee should do all the European Standing Committees in the Committee’s field, or whether that task should be given to different Members at different times. I had not previously given much thought to that.

Q178 Chair: I have been on this Committee now 27 and a half years, which is quite a long time, and I have been on many, many European Standing Committees as well. I have to say that for those who are not interested in the European dimension, things are catching up with them a bit. There is a very powerful case for having people on Standing Committees, who come from Select Committees, who have the opportunity to know more than other people about the given subject matter. On Mali, for example, today, which is being debated as we speak, you have, Europe is right there at the top alongside the major policy areas the Committees are supposed to deal with. Yes, the issue is out there; of course it occupies the minds of the public. In any survey that you do there have been such, to quote the Liaison Committee’s memo, “varying degrees of enthusiasm” from departmental Select Committees to people pitching up? I would like your thoughts on whether there are things that could be done to make them more effective, whether it be a permanent membership or a better notification system, with specific reference to the European Committees. Keith Vaz: One of the problems, certainly in Home Affairs—going back to Mr Connarty’s question and answering yours as well Ms Mordaunt—is the fact that if a European issue comes up on Home Affairs, and there is the possibility of Members of Home Affairs attending, I would automatically think of Mr Clappison and Mr Reckless, simply because they have an interest in these issues and I know that they will be able to attend and they will come back and tell the Committee what is going on. Other Members of the Committee, going back to what Sir Alan says, may not have that interest; it is not that you need to be different from normal people to be interested in European issues, but you do have to have an interest in these issues in order to follow what is going on.

We do not publicise the work of European Committees enough. It goes back to what I said at the beginning; it started under the last Government, as if Parliament is kind of a sideshow to what is happening elsewhere. We need to have this, first and foremost, on the Floor of the House; there needs to be time on the Floor of the House to discuss these issues. Then, when we have European Committees, we need to ensure that they too are publicised in a way that will encourage people to come.

The work that you all have done has been extremely important. Yes, the issue is out there; of course it occupies the minds of the public. In any survey that you have, Europe is right there at the top alongside immigration, and possibly policing and the economy. The fact that the public want us to do this should encourage us to publicise them more. That is what could be done. Ms Mordaunt, to make sure that more Members of Parliament get an interest in this.

Sir Alan Beith: I would place a slightly different emphasis by saying that these are not Committees about Europe; they are Committees that are about matters of domestic policy, where the major policy
change has originated through European processes. Therefore, Parliament ought to be dealing effectively with them. Part of what I have been arguing is that we should have been dealing with them long before they reached the European Standing Committee, because we ought to have been steering policy, so that it went in a sensible direction; really, the ink is almost dry by the time we get into a Standing Committee.

I am not really qualified—and perhaps Mr Davies will say more from his own experience—to talk much about what it feels like in the European Committee itself, because I have only been very occasionally myself to those particular Committees, but we all know the counter-pressures that make Members reluctant to take part in them, and up to now the unwillingness, I think, of Members to make a commitment to permanent involvement. There is partly a good reason for that: what defines a European Standing Committee is that it deals with issues that have come through the European process, but the subject matter varies all the time. The subject matter is of interest to Members of Parliament who are taking an interest in that subject, so they really only want to be involved when that subject is brought up.

Q 180 Chair: Could I just at that point mention that the questioning during that session, which is, under the Standing Order, available for one and a half hours, would be far more productive if the questions were being asked by people who have the expertise to ask the questions, rather than somebody who has just been shoved on to it by the Whips to try and get the business of the way.

Sir Alan Beith: Absolutely.

David T. C. Davies: Mr Vaz has just reminded me that, as a Member of his Committee, he once sent me to Brussels or Strasbourg, to a meeting of Select Committee Chairs from all over Europe, and it was a very pleasant two days. At the end of it, though, I did wonder whether anything had been achieved; everyone got a chance to make a five minute speech, while everyone else talked into their mobile phones and drank coffee. My point is that, if we are going to have rapporteurs or somebody on a Select Committee dealing with Europe, we have to make sure that it is focused and that they are getting something out of it. Much as I enjoyed it, I am not sure whether anything changed really.

Q 181 Mr Clappison: I would like to feed this through to Sir Alan, as Chairman of the Liaison Committee, because he mentioned the fact the ink was almost dry by the time it came to these European Select Committees. I keep attending Committees where ink is in fact dry, because Ministers have already agreed to measures in Europe before the debate about the Standing Committee; it is literally a waste of time, and MPs cannot be blamed for not taking much interest, because what they are saying is of less consequence than the process that Mr Davies has just described.

Sir Alan Beith: The really interesting process is the process in which a Select Committee at an early stage is questioning those who are affected, and Commissioners, and others, about what would happen if it is drafted or developed in this particular way.

Mr Clappison: You do get the feeling, as a Member of Parliament looking in on this, that it is actually lobbyists in Europe who get the best deal out of the European Union. They are plugged into it right from the beginning, and if you want to get something done, go to a lobbyist; do not go to an MP. That is just my view.

Q 182 Michael Connarty: I want to emphasise why I am so keen to go back to fixed membership. The point was made about expertise. When I was asked by a Whip in the 1992 to 1997 period to go on a European Standing Committee, it was to fill a space. Three Committees had three subjects, and we still refer them to the appropriate A, B or C Committee, though they do not exist anymore, and it was environment, health and safety, and agriculture. Coming from an industrial community that I come from, at first I could not see why that would be relevant; then I realised we were dealing with matters to do with the chemical industry; we were dealing with matters to do with riparian ownership and contamination by industrial process, which were then being treated through European moneys. Eventually I realised that every single topic that came before a Standing Committee was relevant to my constituents. It became a matter of pride to know what was happening in the agricultural community, because it was about food, and what was happening in the environment, because it was about the landscape, etc.

Now, of course, if we were still there, these would be talking about climate change, about carbon taxation, about pollution; all of the things that are very relevant. People have lost that ability to gather that knowledge, and know that something is both important and relevant to their constituents. As the Chairman says, they are stuck on, on a random basis.

The other point made by James was about lobbying. If anyone wants to take up a topic that is coming for debate they do not know who to go to; there is no idea of who will be on that Committee, to whom you should send the brief or speak to. We have cut off a whole swathe of civic, industrial and commercial society from these processes in here, and it seems to me that the rapporteurship, though it might be of interest, is not a substitute for permanent membership. Some may come from your Committees, gentlemen; some may come from other sources, but—and this is a general point and maybe you should pass an opinion on it—I get the feeling that, when we have debates now on the Floor of the House, sadly it is the same old suspects who stand up, and the debates turn from talking about the topic and the issue, to a view about our position in Europe in relation to membership.

You can read the debates; I have practically stopped going to them, because I know they will turn into the same people getting called again and again to make a variety of the same speeches, not always about the topic, but about the general overall view of the relationship between the UK and Europe. Now, that would change if we had people with some expertise to bring to the debate, but I do not think that is happening at the moment. We have turned into a
performance, rather than a serious discussion of subjects when they come to the Floor of the House.

Keith Vaz: Chairman, we miss Mr Connarty from those debates.

Michael Connarty: I am sure you do.

Sir Alan Beith: I have been a Member of the House for 39 years, and through the whole of that time I have watched again and again—and been partly guilty—the development of a system in which, when the word "Europe" appears, people feel this is a debate about Europe. There is an entirely legitimate debate to be had about whether we should be in the European Union or not, on what terms; I have my own views, and you know what they are. However, what most of these procedures are for is to establish whether the right policy is being pursued in relation to agriculture, in relation to industrial chemicals, in relation to arrest warrants, or whatever it may be.

Chair: I am very touched by the way you are putting this, but could I simply say that one of the problems is that by the time it gets to debate, to my knowledge in the 28 years I have been in this place, not on one occasion, apart from the European budget, has a vote of the House of Commons ever gone against the European issue. Now, if there was merit in discussing it, surely there is equal merit in the Parliament in voting to say whether we wanted it or not. That is another side to the equation.

Q183 Penny Mordaunt: I was going to ask a very brief supplementary. You mentioned time on the Floor of the House, and we all know there are lots of issues that take up an MP’s time. Although I am not suggesting this is a recent problem, I would be interested to know if you think that the House’s new hours are a help or a hindrance to some of these interested to know if you think that the House’s new hours are a help or a hindrance to some of these issues, about people being able to attend things they might want to attend.

Keith Vaz: I am a dinosaur, and I voted to keep things as they were. We have enormous difficulty in Home Affairs in having our meetings on a Tuesday morning, as they were. We have enormous difficulty in Home Affairs in having our meetings on a Tuesday morning, because the House sits on a Tuesday morning. If you choose to do it when the House finishes questions, there is always going to be a statement. It limits the amount of time available for discussions on European Affairs; if it has to end at 6.00 pm then all the Government and all Ministers have to do is decide that there is going to be a statement, and that takes an hour out of the debate. If there is an urgent question it is another half hour, and there are points of order and all this kind of stuff. If you look at the debate we had last week on Home Affairs, we had the whole afternoon from 3.30 pm to 10.00 pm scheduled, then we had two statements and an urgent question. The hours have limited, in particular, discussion of European Affairs. In my view, because those were the longer debates that were not usually on a motion that enabled people to not necessarily have a time limit, but develop arguments and themes. I sat through Mr Hemming, I think it was, who was reading his entire speech into Hansard in three minutes in the Home Affairs debate. I understand why he did it; I am not criticising him for doing it, but the fact is, it is not like the American system where you read speeches in; otherwise there is no point in us being here. If there was a vote again, I would also vote to go back to the original system, but I am in a minority; I am a dinosaur, M’s M orduant.

Sir Alan Beith: To separate the two parts of the question, as far as Select Committee business is concerned, the most scarce commodity for Select Committees is the time of Members, and that is at an even greater premium now. However, I do not think this disproportionally affects the European work that Select Committees do; it affects all aspects of their work. So far as European legislative business is concerned, it is a different matter, because I spent many years in this House when that business was taken after 10.00 pm. 10.00 pm to 11.30 pm, and then another one often from 11.30 pm until 1 am. I was somewhat younger when I spent many years doing that; I would not now recommend it, but it has led to a situation that we have been describing earlier, which has other weaknesses.

Q184 Chair: Could I just ask each of you, finally, one last question? Would European Standing Committees be more effective with a permanent membership, with the intention of developing Members’ familiarity with the subject matter?

David T. C. Davies: Yes, but they would become sort of a de facto Select Committee, wouldn’t they, in that case?

Q185 Chair: No, because this is ad hoc, these European Standing Committees: we recommend them for debate on the basis of legal and political importance; they then debate the subject matter.

Sir Alan Beith: I have not thought about it. My instant reaction is yes, but I probably ought to think about it a bit more carefully.

David T. C. Davies: In general, no, although there might be a case for there being some core Members of the Committee. If there was no change of personnel to reflect the different subjects being considered then they would be less effective.

Chair: Well, with those three very diverse answers, we shall have quite a problem working out what the answer is. Thank you all very much; it has been a great pleasure.
Wednesday 6 February 2013

Members present:
M r William Cash (Chair) K elvin Hopkins
M r Michael Connarty C hris K ally
N ia Griffith J acob Rees-Mogg
C hris Heaton-Harris H enry Smith

Examination of Witnesses

Witnesses: Ric Bailey, Chief Adviser, Politics, BBC, Mary Hockaday, Head of Newsroom, BBC and Peter Knowles, Controller, BBC Parliament, gave evidence.

Q186 Chair: Good afternoon. It is good of you to come. Maybe we could start with you introducing yourselves, individually.

Mary Hockaday: Good afternoon Chairman. My name is Mary Hockaday and I am head of the BBC Newsroom, which means in effect that I am responsible for much of the core daily news output on television, radio and our digital services here in the UK and abroad. I am also a member of the News Group Board.

Ric Bailey: Thank you Chairman. It is a pleasure to be here for your inquiry. I am the BBC’s Chief Political Adviser. Part of that involves advising both programme makers and management on political impartiality, such as interpretation of the guidelines regarding impartiality, and also advising on political independence for the BBC. Just by way of background, my editorial background is I used to be the Executive Editor of Question Time. If we are talking in terms of public engagement, that is my background. I also was part of the negotiating team that set up the prime ministerial debates in 2010.

Peter Knowles: I am Peter Knowles and I am in charge of the parliamentary programmes that the BBC does. I am Controller of BBC Parliament. I am the Editor of Today in Parliament, Yesterday in Parliament and also of the website, Democracy Live.

Q187 Chair: Thank you very much indeed. I will start by saying that we have our functions under the Standing Orders of Parliament and I imagine you are familiar with those by now. They do require us to examine all European legislation and to report as to what are matters of political and legal importance. Section 2 of the European Communities Act 1972 requires the United Kingdom to implement all legislation that comes out of the European legislative system. There are a significant number of matters, just to give you an example, which are set out in the table of contents to the consolidated treaties. I will very briefly mention some of them. By the way, I ought to mention that Sir John Grant—who used to be a very distinguished diplomat—when he came to give evidence to our Committee about a year and a half ago in respect of the relationship between the UK Parliament and the European Union, said that he was both struck and amazed by the extent and range of the impact of the legislation on the United Kingdom, its electors, its voters and in your case licence fee payers and so forth. He was really taken by the list that we gave him of the things.

I am going to mention a few things to put them on the record: provisions of democratic principles; relationships regarding the external action of the European Union; common foreign and security policy; the question of Union competencies; citizenship; non-discrimination; internal market; freedom of movement of goods; agriculture and fisheries; customs; free movement of personal services and capital; area of freedom, security and justice; competition; taxation; approximation of laws; economic and monetary policy; employment; social policy; education; culture; public health; consumer protection; industry; research and technology; environment; energy; tourism; administrative cooperation; overseas countries and territories; common commercial policy and institutional and financial provisions relating to the institutions of the European Union and so on.

I wanted to put that on the record, having regard to the enormous interest that is now being expressed, at any rate, by the European Union, in relation to what is going on here in the United Kingdom, and also because it seems important for us to examine—in relation to what it is you provide through the BBC—whether or not we can explore the horizons of this. In a way, that is what we are looking forward to: to try and establish where you see it all fitting into your functions under the Royal Charter. How does the BBC define impartiality in relation to the European question and in relation to the legislative processes in accordance with its duties under the BBC Charter and its own editorial guidelines? How has this evolved over time and how does it affect editorial decision making? You choose who you would like to answer that question.

Ric Bailey: Shall I kick off? As you will know, Mr Chairman, impartiality under the Charter is defined as “due impartiality”. Everybody talks about the word “impartiality” a lot, and often forgets what the word ‘due’ means, which is that we have to take the context of what we are doing. People often want to measure impartiality as if it was some sort of mathematical equation, and it is not. Impartiality is on a day-to-day basis in terms of how we define it comes down to good editorial judgment. That is what we ask of our editors every day of the week: to make good editorial judgments when impartiality is absolutely the most fundamental, defining principle of the BBC as set down in the Charter. It is difficult to give you
something that goes beyond that editorial judgment because what you are talking about is context. If you are looking at European matters then we have to make a judgment about getting a range of opinion, we are trying to explain—part of our Public Purposes brings in citizenship, as you mentioned—explaining democratic principles and giving people the information to be able to take part in a democracy is all part of that. There is nothing specific in the Charter or even in our guidelines. We have a set of editorial guidelines that are publicly available, which set out what impartiality means. What we do not do is do that by different subjects. All the subjects you mentioned are all, in our terms, public policy. They are major matters; they are covered under the Charter in that way. We are obliged to be impartial. We are accountable to the licence fee payers through the BBC Trust to make sure we are impartial.

Ric Bailey: There are several ways. We have a very transparent and thorough complaints system for people who feel that we have not been impartial in any particular way. On a day-to-day basis, there is no organisation that is more self-critical than the BBC. You will have seen that in the past few months. We do look at what we do an awful lot. Colleagues like Mary and Peter spend an awful lot of their time, as part of their editorships of programmes, asking themselves the questions. Are we being properly impartial? Are we getting a proper range of voices? Impartiality is not a perfect thing that you have or you do not have. It is something that you are aspiring to all the time. Asking yourselves those difficult questions all the time is part of that, and being responsive to the licence fee payers is also part of that.

Ric Bailey: There is an awful lot more to it. Impartiality is quite a complex thing. It will be different in different circumstances and different genres and different audiences. For instance, programmes that are on every day of the week are trying to get impartiality over a range of time. Other programmes may go over a long period of time. There will be different values that you are trying to apply. If your abiding value is impartiality, you are asking yourself that question all the time and you are open to public scrutiny on that and also to the BBC Trust, then those are the things that I hope keep us on the straight and narrow. As you say, it is not something that you are going to get 100% right all the time.

Ric Bailey: I was with you until the end there, but, as the former Executive Editor of Question Time, I would say that that programme probably gets more pressure than most. It reaches a very broad audience, not just a political audience; it reaches an audience on BBC One, so people either do want to be on it or want to influence people not being on it. That is a regular part of the process of selecting a panel. On a programme like Question Time, on any one week, you have to get an appropriate panel, but also across a whole series you have to have ways of ensuring you are getting a range of voices. Often the Front Benches will take the lead part on Question Time and, in the end, scrutiny is part of its job of asking difficult questions of those in power. Of course, if you only had the Front Benches on, then there would be other opinion in the Back Benches or from former Ministers who may not come from the same point of view and you would not be hearing those voices. Part of the calculation you are trying to make across a whole series is making sure you get that range of voices on that sort of show—not just Question Time, but other shows like that.

Kelvin Hopkins: I am very interested in your attempt to be impartial, but from time to time you come under pressure from outside organisations—the Director General’s office, maybe. How much pressure is put on you? I will just give one example. I know that when Robin Cook resigned from the Government over the Iraq war, the New Labour hierarchy went to great lengths to prevent him going on Question Time. There was no attempt to get a critical Labour voice on Question Time. The BBC buckled.

Chair: Could I take you back for a moment to the specific Articles of the Charter? I do not know whether you have a copy in front of you, but I would like to traverse one or two of the points that arise as follows. Under Article 3 of the Charter you have obligations in relation to serving the public interest and promoting its Public Purposes. How does this apply with regards to EU legislation and the role of the European Scrutiny Committee, given that the Charter was granted after the Wilson report of 2005? Perhaps I could roll that one up with the second question. What internal papers have been issued for the guidance of BBC employees in relation to these and can you disclose those to the Committee, please? Can you answer the same question in relation to the framework agreement as well? What we are looking for is the question of what internal papers you may have within the BBC that go through the question of the relationship between Article 3 of the Charter and the question of EU legislation and the role of our Committee.

I cannot be 100% sure but I would be very surprised if there were any, Mr Chairman. In the end, public interest is about us attempting to make a judgment about what is in the public interest in terms of our journalism. I do not think we have anything internally that relates to specific areas. We have an obligation, as I have said, on citizenship to ensure that people are able to take part in democracy and I dare say we will come to that. I do not think there are any
internal papers that we are hiding from you that would give you any more information.

Q192 Chair: I did not suggest you would be hiding them. I was wondering whether there were any.

Ric Bailey: Not to my knowledge.

Q193 Chair: Can you explain, in the context of European scrutiny, how the relationship between the Trust and the Executive Board operates under Article 9? In what respect are requirements imposed on the Executive Board with regard to European scrutiny and European legislation and its impact on the voters and licence fee payers?

Ric Bailey: The Trust holds the BBC to account for its journalism. It does not take any role pre-broadcast. These are editorial judgments for the Executive for which it is held to account by the BBC Trust. From time to time, the Trust will conduct reviews into various aspects of what the Executive does. There is one at the moment looking at impartiality, looking at breadth of voice. As I understand it, it is looking at that in the European context and it will be reporting later in the year and will be part of next year’s annual report. I am assuming that will pick up on elements of the Wilson report.

Q194 Chair: Article 3 specifically states that “the BBC exists to serve the public interest” and its “main object is the promotion of its Public Purposes”. Then it goes on: the Public Purposes are “to sustain citizenship and civil society; promoting education and learning; stimulating creativity and cultural excellence; representing the UK, its nations, regions and communities; bringing the UK to the world and the world to the UK” and so on. In the context of what I said at the beginning about the nature of our function—and we will come on in a moment to the range of matters that are published in relation to the reports that are produced by this Committee—what we are interested to know is how you interact with that in terms of these functions, which is to inform the British people about what is actually going on?

Mary Hockaday: My Chairman and Committee, perhaps I could bring in the perspective of those involved in the production of news and the editorial teams. As Ric indicates, our philosophy, our obligations under the Charter, apply to any topic that is held to account by the BBC Trust. From time to time, the Trust will conduct reviews into various aspects of what the Executive does. There is one at the moment looking at impartiality, looking at breadth of voice. As I understand it, it is looking at that in the European context and it will be reporting later in the year and will be part of next year’s annual report. I am assuming that will pick up on elements of the Wilson report.

Q195 Chris Heaton-Harris: Just one more question on impartiality: I was hoping you might mention something about the review announced by Lord Patten last year in October, being led by Stuart Prebble, into BBC practices after a host of complaints about impartiality on a whole range of subjects, the European Union relationship and matters of its working being one. I wondered how that review is going and whether it is at a stage that we can discuss it.

Ric Bailey: I do not think it was launched after a series of complaints. It is one of a series of impartiality reviews that the Trust does.

Q196 Chris Heaton-Harris: Lord Patten said it was after a series of complaints, in a speech to the Broadcasting Press Guild on 10 October last year.

Ric Bailey: But as you say it is a BBC Trust review; it is under way. The BBC Executive is obviously taking part in it but I am not in a position to say how it is going because that is a BBC Trust matter.

Q197 Michael Connarty: Are they not reviewing you?

Ric Bailey: Yes.

Michael Connarty: You take part in something where you are being reviewed. I find that difficult to believe. Do they do it in some abstract manner?

Ric Bailey: No, there are conversations taking place and talking to people, but it would be premature for us to talk about it before we have heard what the review says.

Q198 Nia Griffith: If I can just take a step back, sometimes you get the feeling that the coverage of Europe is very similar to your coverage of a foreign country; it is not really coming from the inside. If you are covering what is happening here in Westminster, you are covering it because we are part of that country. We are also part of the European Union, but that does not seem to come across. It seems very much
that it is outside. Is that interpretation of this almost a misconception? Would you think that is actually what is happening?

Mary Hockaday: We are all using this word “Europe”, but Europe is many things. It is a number of countries, and sometimes we are reporting on them indeed as foreign countries where things of interest are happening. For our correspondents and our team based in Brussels, part of their remit is to report on Europe. And, a large part of this remit is to report on the European Union, and another part is to report on the eurozone. One of the things we have endeavoured to do, and needed to do, a lot in the last period is to be very clear where Britain sits in relation to a given story, because of course Britain is in the European Union, but not in the eurozone and so on. A large part of my job is trying to explain how we are part of something that may be happening in Europe or not. Today, for instance, we are reporting on the European Parliament’s debate, and now they have passed the new fisheries policy. That is something for which we have been reporting the run up, the debate, the views among the MEPs, but also the views of fishermen in Scotland. The point that is something that is happening in Europe or in the European Union; but Britain is part of that debate and decisions will have consequences for the British.

Q199 Nia Griffith: That is the exception rather than the rule, if I may say. I think you have chosen a very good example of illustrating something that we are talking about, which is us being in part of a process. An awful lot of the reporting has been much more that of observer status. I fully understand: euzone is over there and we are here; we are not part of it. Your fishing example is not something where you could give me another dozen examples of similar policies that you have examined in similar ways.

Mary Hockaday: I probably could. I could talk about tyres and how much noise they are allowed to make. We do a lot of output on different platforms for different audiences, and we are sometimes mindful of what a particular audience may be interested in or how we can help them understand what the processes in Europe may be through something that directly affects them. For example, the programme we do on Radio 1 for a younger audience; they are very interested in data roaming charges and how much mobile phone charges are across Europe. That is something we have covered. We have covered the European Court of Justice—I know that is not an EU institution but affects us—and the decision for Ryanair and the compensation issue around the ash cloud. I really can get to a dozen if you want. You can see perhaps from the examples I have given that we are very attuned to debates and decisions that may have a real impact on the lives of our audiences in a very direct way. We are also regularly, some might say relentlessly, reporting on the debate in Europe for instance about banks, banking union, banking regulation, fiscal union, because again, it may not be what is in your pocket today, but in terms of the institutions of this country, the economic welfare of this country, it is crucial. It is something that our audiences understand matters to them.

Q200 Jacob Rees-Mogg: I will move on to some of the specifics of European scrutiny and how it fits in a parliamentary question. The question is essentially directed to you, but if I can begin by saying how much I enjoy the programmes you do. Yesterday in Parliament, Today in Parliament and the parliamentary channel. Thank you for the fair share of it I seem to get, which I am grateful for. The issue perhaps relates more to European scrutiny than to my own personal appearances. As a context, everyone knows that European law is now a very high percentage of our laws. People argue over the specific figure, but it is an increasing amount and a high amount. Proportionate to UK laws, it gets relatively little coverage in all news outlets, but even within the parliamentary reporting that takes place, in spite of the remarkable amount this Committee does. Since September 2010, the European Scrutiny Committee has issued over 90 reports on European Union documents under its Standing Orders, including reports on any number of EU issues, including the EU Referendum Bill, the opt-ins and the European Committee debates that cover every document realty that comes out of the Parliament that is of standing to be worthy of debate. I wondered on how many occasions the BBC has reported on any of these 90 European Scrutiny Committee reports, broadcast proceedings or interviewed the Chairman to represent the Committee.

Peter Knowles: The simple answer in numbers is we have shown, in the last two years, four of the hearings of this Committee. In the last year, the work of this Committee has been featured in some detail four times in the Friday edition, the analytical edition, of Today in Parliament in features, including a report in November looking at this inquiry and setting up this inquiry. That is a very precise answer, but of course the way in which most people will have encountered the work of this Committee through us is in terms of your referrals, when Reasoned Opinions are given, you think it is most important and it is referred to the Floor of the House. That is really where we come into our own. We are able to deliver a significant audience through BBC Parliament and through Democracy Live to those proceedings on the Floor of the House live. The Members who are here today are all enthusiastic participants in those debates. They are often reported on Today in Parliament and that reaches another very large audience. It is through the Floor of the House that is the best example of how the work of this Committee is known.

Q201 Chair: I will ask just one direct question arising out of that. The Public Accounts Committee is the other main scrutiny Committee. They do the economy and private-public finances. We do the European dimension. There is Home Affairs as well. I think it would be reasonable to say that the Public Accounts Committee is, shall we say, twice a week, the Home Affairs Committee probably likewise. I am not sure we have ever had anything on the European Scrutiny Committee in that context. Would you agree? I certainly cannot recall it.

Peter Knowles: We have filmed and broadcast the proceedings four times in two years.
Peter Knowles: We have only just started, in October this year, showing any Committees live on BBC Parliament. We changed the schedules quite dramatically in mid-October with the new sitting times for the House. On Tuesday and Wednesday morning the Committees are shown live. Most of the Committees, when we take them, are shown live on Democracy Live on the web. People do have access to those but it is a relatively limited number; it is a much smaller number than the Public Accounts. There are powerful reasons for why we make that judgment. There are all sorts of things to say about this. Let us start with the language of proceedings. In preparing for this session, I have to be impressed by the hard work that goes in by your Members in, first of all, understanding what is coming at them—these 1,000-plus documents. It leads you to work with each other in what is an incredibly difficult and dense language, a thicket of acronyms and legal speak, which is terribly difficult for the normal person who does not have a specialist EU politics background. It is not a criticism of your work. It is a question for you as to whether, when you are working in that fashion, you want to get a wider audience, or the importance of getting through the business efficiently such that you have to deal with each other in terms of that language. May I read two sentences from the last session that we took—the one with Mr Brokenshire? This is not the most difficult thing, but he said, “That is why ECJ jurisdiction and the implications of some form of preliminary ruling or indeed infraction proceedings arising from these measures are some of the key elements that we are examining as part of the analysis. As I am sure you will appreciate, this is a complex, multifaceted piece of work. It is not simply the Home Office; it covers a number of different Departments that have an interest in these pre-Lisbon matters”. I have read it two or three times, and I am still not sure what he meant. There is no chance of a viewer at first hearing grasping that. That is a real problem. Most of the time, in terms of what the Public Accounts do, you get it first time. It is surprising. The other interesting issue here is witnesses. This is a document-based Committee in terms of its work—the 1,000-plus a year. We are speech-based because we are broadcasters, so that puts us at some distance from each other. What works in terms of coverage is Committees that choose a wide range of witnesses. In an ideal hearing, it is witnesses taking contrary views; you hear one set of views then you hear a different set, in the fashion that the Lords Scrutiny Committee operates. That is something that viewers can follow. We are not filming this session but we were filming this morning—rather, we commissioned the filming through Parliament—on the block opt-out with the Director of Public Prosecutions, a senior fellow from ACPO and so forth. That does work in terms of broadcast coverage. Sorry, I have gone on.

Q203 Michael Connarty: The point that you have not noticed is that they do not have Select Committees in the Lords. What you are watching is the only thing they have that echoes the Select Committee structure. That is why they have the same format as normal Select Committees. It is not that we could somehow metamorphose into that kind of Committee because we have Select Committees doing that. Can I pursue the question of coverage? When this Committee refers something for a debate, either on the Floor of the House or particularly when it is sent to a Standing Committee, that is where the issues are debated. We are looking at what is politically, economically and legally important. But they are not covered either. The problem would appear to be what you are saying is that if it is juicy enough to get above a certain mark that might interest the public we will run it: problems in the eurozone; the question of a block opt-out maybe, because it looks like it is going to be controversial. What you were criticised for under Wilson was that “BBC reporting”—this is the accusation itself that was put to Wilson—“has failed to increase public understanding of EU issues and institutions and their impact on British life, thereby contributing to public apathy”. All you have given us back is, if it is juicy enough to be in that frame of combative politics, we will run it. The rest is far too difficult to explain to people so we will not run it. That is a valid criticism. The accusation from the other side is that people therefore accepted the EU as a good thing.

The problem now has not got any better and I am not worried about whether they like it or not, or which side they are on in the controversial debate. It is the lack of understanding and the knowledge that really worries me about what Europe means for the day-to-day lives of our country and the day-to-day work of our businesses. If that is part of your remit, how do you do it?

Peter Knowles: In terms of the dedicated coverage, just because it is dedicated coverage does not mean that the audience is in some way a specialist audience. In December, we had a five or six-minute report on Today in Parliament on the food banks issue and the attempt to make Governments throughout the EU contribute to the way food banks operate, and it was something that was referred to a debate on the Floor of the House. The report on that in Today in Parliament will have been heard by around half a million people because that is the audience we get. We get a phenomenally strong audience to Today in Parliament. They are not specialists; that is the generality of the Radio 4 audience. It gets the highest share in its time slot of any news programme aside from bulletins; the midnight bulletin does even better. It gets the highest share of any programme, so half a million people plus will have heard that report. The same goes for the two debates referred to the Floor of the House on the very first day of this term. I know there was unhappiness about the timetabling of that debate in this Committee, but it got through to the audience because they were reported on in Today in Parliament.

We are not shy of the difficult. I will give you an example, which is highly self-serving as you are about to see. We will work with the Outreach team on some of the events they do with the Youth Parliament. One of the things they are doing at the moment is
really interesting is a series of talks or lectures aimed at university students on how Parliament works. It is a really good idea. Before Christmas, we showed a lecture on pre-legislative scrutiny. That is not me playing the ratings game. In two weeks’ time, your Chairman is giving a lecture on European scrutiny, and we will show that on Saturday evening, against Casualty, on BBC Parliament. Maybe it will not get a huge audience on Saturday night.

Jacob Rees-Mogg: No contest.

Chair: I am really worried for Casualty.

Peter Knowles: But it will be repeated and it will then be available on Democracy Live. We are not shy of output. Much output is constrained in the number of occasions, on our live continuous coverage such as the news channel, we are making judgments at the times when we think a debate is going to be of sufficient importance. For instance, yesterday, we did cover the debate in the House about gay marriage. We were also able, even on the news channel, which is getting one kind of audience, to cross-trail and indicate to people, because they really wanted to stay, that proceedings here today are being put on a webcast at whatever level—local, national, European—and to understand why it matters to them. One of the things that have changed in the last few years is the prominence of a lot of our digital services, our online platforms. There we are able to go into more depth and to offer more depth. We have Democracy Live, but also within the general articles, as well as in the news reporting, we have a particular index and a section called Inside Europe that includes ongoing news stories of the day or the week, but also links to a very good series of Q&As and some very good guides to some of the European institutions, written as clearly as we can for the general reader.

Q204 Mr Clappison: I have every sympathy for the views that Mr Knowles expressed about the use of language by Ministers. We have to sit and listen to this a lot. It really is a problem for the Civil Service who are developing a separate language and vocabulary. We find it is as inaccessible as I think you do. I was intrigued by what you said a moment ago that proceedings here today are being put on a webcast but they are not being televised. It seems to me to show, if I may say, undue modesty on your part. Why was it that you decided not to show yourselves on your own programmes?

Peter Knowles: Thank you. It is a good question. There are on average 11 Committees, both select and general, which sit during the week. In addition to that, a number of Select Committees sit during the week. But that is seven or eight out of, last week for instance, 45 Committees. That is not including the General Committees; that is just Select Committees. This week so far there are 35, but it is a number that creeps up during the course of the week. There is a difficult choice. On Wednesday afternoon, faced with not a lot of information—because all we are getting is the witness list, and sometimes we do not even get that, which does make life difficult—we are looking for seven or eight Committees that we think are going to make sense if watched start to finish. There are also normally another half a dozen bids
from the rest of the BBC for particular news lines or particular witnesses that they think might make news stories. We are easily the biggest customer for this service.

Q205 Chair: Do you have a tendency to say, “This is complicated, the European stuff has to be put at the bottom of the queue”? From what you were saying earlier, though you were putting it as delicately as you could, this is not the kind of thing that is terribly easy for people to follow. Therefore, however important it is, it takes a lower priority. I am not sure, if I may say, that that fits very comfortably inside the Charter requirements in relation to Public Purposes.

Peter Knowles: I think we have demonstrated that we are doing an awful lot more, across Democracy Live, across the Daily Politics, across what Peter is doing, than we were in 2005. The point remains that this is challenging stuff. We do our absolute best to make it comprehensible. One of your own colleagues, Mr Ellwood, in the paper he did recently, said there is very little appetite amongst MPs themselves for this in terms of engaging interest. That does set a big challenge. It is as if we are going to make that comprehensible more widely. The Chairman of the Welsh Affairs Committee in his evidence to you suggested there needed to be an idiot’s guide, not for the public, but for MPs. So it is a real challenge.

Q206 Chair: Yet you do appreciate the vast impact that it has on people who are at the receiving end of the legislation.

Peter Knowles: The legislation has a vast impact. What is interesting here—is it a very tough question that this Committee has set itself in this inquiry—are the impacts that your findings have on policy doing on law. I am hugely impressed that this Committee is taking this on. That is probably the fundamental question of this inquiry. It is very clear to me what the impact is. I think the Lords Select Committees on EU scrutiny see that their role is policy. They believe, and give evidence for it, that they influence policy, and they influence it early on in the process of creating EU legislation. You have a very different role at the other end of the process, way downstream. What would be interesting to come out of this inquiry is that demonstration of what changes as a result of all the hard work that goes on in this Committee. That is a story, but it is not very clear; it is not very easy to read that out from your reports. The best way we have of telling that, at the moment anyway, is what happens on the Floor of the House. We are passionately committed to that and we deliver an audience to it. People do imagine that, if they are watching BBC Parliament, they are probably the only person in the world that is doing it, but it is just so much not the case. Yesterday, based on the audited figures that come from BARB, 570,000 people were watching BBC Parliament at home because of the interest in the same sex marriage debate. I have no idea how many people were watching in offices or out of the home, as there is no measurement of that. The point I made before is that, yes, it is dedicated, specialist coverage but it is a much broader audience than you would expect that we could reach. This fundamentally how we are doing it is through debates on the Floor of the House.

Q207 Mr Clappison: It sounds like you are making a case for sort of Terry Wogan, Eurovision-style commentary on some of these Committee proceedings.

Peter Knowles: We do have explanatory captions. There is just a limit to how much explaining any viewer is prepared to have. It is not homework.

Q208 Mr Clappison: Under the work of this Committee, we send some issues to be debated in Standing Committees in Committee Rooms. We work very hard to get more of the debates that take place in European Standing Committees, which are a bit like the secret of the House of Commons?

Peter Knowles: No we have never broadcast one.

Mr Clappison: At all?

Peter Knowles: We did feature one, including broadcast quality audio, in the Friday edition of Today in Parliament. We did interviews as well. That was about safety on gas and oil rigs, and it was seen by this Committee as a power grab by the Commission.

Q209 Chair: Could I suggest, getting back to Michael Connarty’s point about the European Standing Committees, you look at what goes on in those Committees, and at the number of occasions where they take place and examine what actually goes on there? For example, I can say with confidence that we were way ahead on Mali. We recommended that there should be a debate on Mali. It took place long before public consciousness had caught up with what was really going on there. But that is just one example. I invite you to consider for the future that if you were to look at the European Standing Committees that have been established and then relate those to the daily news that is going on in that week, you might find, and I am sure you will, that the debate that does take place is extremely relevant to what is going on for the ordinary man on the street.

Peter Knowles: Mr Chairman, I am sure it is relevant, but there are issues, which this inquiry has discussed, about membership of those Standing Committees, the lack of dedicated membership, the lack of expertise.

Chair: Well, we are looking at that.
Peter Knowles: It is only you as Committee Members that are really putting the work in on those Committees by and large. Those are issues that this inquiry is having. The General Committees are not advertised to the broadcasters by Parliament. They do not appear on our sheets. They are off the radar.

Q210 Michael Connarty: Can I follow up that point? This is one of my obsessions as a former Chair of the Committee, when it was decided to abandon the membership Standing Orders on the Floor of the House. I have said since then, it was 39 members; it was three groups of 13. They learned their trade; those Committees had specific remits and you become a bit of an expert in those remits. Then maybe you left it and went off into Government or Select Committees. That has stopped. The business community once said that the House of Commons was asleep when it came to European scrutiny, but then when we had the conversation with the gentleman who said it from the CBI, he realised he was not talking about us; he was talking about the fact that there were not many people outside this Committee who were really scrutinising what was going on. The business community lost the contacts. If you were in a particular industry with a particular thing coming up, you were a civil group, you could find those people and go and put your case, send them an email or whatever you wanted to do. In your case, though, you never used it; the media tended not to ask the people in the Committee what it was about.

It would not help if you did not cover them anyway whether the membership was permanent or not. We are asking you about your coverage and your role. You tell us you are doing lots of things. I think the citizenship and the business community are slipping away from their understanding of what goes through as European policy. This is a closed Committee normally; we are not normally taking evidence. We do most of the business in a closed Committee. Then we refer things to the open Committees for debate. They are the issues we think are not just legally and politically important, but are fundamentally going to affect. But it has never been seen to be worth challenging or change or damage the people whom they politically important, but are fundamentally going to be the issues we think are not just legally and politically important, but are fundamentally going to affect people. That is our job: to say to the public, “We are worried about what you are doing here in signing off this is not going to be detrimental to our citizenship.” That does not mean that the Government, “We are worried about what you are doing here. We want you to prove to us and to the public, and thereby hopefully to the public, that what you are doing here in signing off this is not going to be detrimental to our citizenship.” That does not get covered. What gets covered is when you have the big bashes, the ones that are emotional because you can put them in a bag and people can somehow think that is what Europe is about. In reality, those are not the big issues in Europe. The big issues in Europe are the 60% of changes in our legislation and our regulations, which people have to live by, and which do not get debated on the Floor of the House, do not tend to cause the heat. I have to say you cover lots of heat, not a lot of light.

Mary Hockaday: Peter will want to answer that from the point of view of the dedicated and specialist coverage. It is interesting what you say. In the general coverage, one of the things that we have come to understand only too well with our audiences on any topic, when there is any complexity at all, is that people care passionately about the issues but they are not turned off by process. We have done some interesting conversations with audiences, and it is clear that you cannot take for granted at all the understanding of words that we would regard as readily understood. Around the economy, it was really interesting; we would ask, “Can you explain to a friend in the pub the following words: quantitative easing, even inflation?”

You got down to what felt like very basic terminology and people did not necessarily understand it or feel it was easy to use or, when it was coming at them off the television or the radio, that it was readily making sense to them. Again, we get a message back that says all the time, “Do not talk to us about process; talk to us about issues and what matters.”

What can happen in a positive way—I am interested in what you say about that sense of the expertise in the Committees—is that we might say not that the Committee met, etc.; we might say there is a very live issue that has been discussed and debated and here is a member of the Scrutiny Committee who has a real interest in it. That sense of people who have an expertise or commitment to an issue is what we often are looking for, not to always generate heat but to shed light. Several of you, and certainly the Chairman, have regularly appeared on our output, not necessarily to talk about the Committee or a process in the Committee but to talk about the issues of responsibility and where it lies, and Britain’s place in Europe and so on. If you think through that framework about the issues, the debates, what matters, influence, that is where the locus of the general news coverage is, even if it is not in the precise process, but Peter may well want to add to that.

Peter Knowles: It is a very good point about process versus outcomes and impacts. Mr Chairman, you are always reminding people in this Committee that this is about laws that impact on people’s real lives. The issue here is that most of the work of this Committee is concerned with the process of a law coming into passage. Does it pass the test on subsidiarity, on proportionality? It is a highly technical view of the world, necessarily. The fundamental point that I probably should have got to earlier about the difference between the hearing with Mr R Brokenshire and what I was listening to this morning, the Lords Select Committee, is one not just about language but also about what the function of the Committee is. With Mr Brokenshire, it was: what is the Government’s plan in terms of dealing with the block opt-out and is it respectful of Parliament? It was all about the process issues, in that hearing. That is what I heard. This morning, we were hearing about what will happen with the block opt-out. Is it a good thing or a bad thing? There were different points of view from witnesses who were experts and interested
Q211 Nia Griffith: You have explained very well the way you see your role as trying to educate about Europe. I am not very sure that, if you go out in the street and ask somebody “Do you know whether the House of Commons has a role in looking at European legislation?” the answer you would get back would suggest that your outcomes are very positive in terms of getting that message across. The question is: what other ways do you think you can do it? We all accept that (a) some of our sessions are closed, and (b) some of our witnesses in this particular inquiry may have been perhaps a bit difficult to understand. But you mentioned the roaming phone thing; that was something we had a Minister in on years ago and was a session that could have been covered then. But there are also ways, as Mary mentioned, that you can report about what is going on. It is not necessarily just about the Committee; it is a spokesperson from the Committee or part of the Standing Committee role. Do you think there are ways that you could make the public more aware of the work that is going on in the Commons, looking at European legislation?

Peter Knowles: I have two thoughts. I know you publish your Reasoned Opinions and your reports. I am much less aware of your activity through the Press Office in terms of releasing agreed statements for the Committee—clearly it is not just Mr Chair speaking—pithily analysing what the problem is and saying, “Here is the problem and we are having a debate about it.” You face a tidal wave of documents from the European Union—1,300 I think last year.

Q212 Nia Griffith: Are you suggesting that if we were to angle our decisions about what we put out to the press, in other words package it up for you, that would be more satisfactory than you trying to take an objective view about what is going on?

Peter Knowles: Not at all; this is about alerting the media, not just ourselves but the media in the press gallery, to stories.

Q213 Chair: Alex Paterson is the person responsible for the interface between the Committees and the media in this context. I will not go through the details but I can assure you there have been some mega issues, because we do not put out press releases unless we think it really matters. We have got one coming up on the primacy of the United Kingdom Parliament. Now, what does primacy mean? I will explain it to you in a second: it means who runs the United Kingdom; who governs Britain. We have got a three-hour debate coming up; we are demanding that on the Floor of the House because of the accumulated movements by Barroso and Van Rompuy and all the EU establishment to try to create equivalence between the European Parliament and the national Parliament. If that is not interesting I do not know what is.

We put out a press release on that, and we will see what happens. It has happened in the past. We had a report on the European Union and sovereignty. The word “sovereignty” may put a lot of people off but the reality is it is again about who governs Britain? When we did that, we got zero response frankly. I am saying to you, I hear what you say about the complexity. We suffer from it as well because if I or not but we have to penetrate the thickets. Some of it is process but some of it is really hard, democratic politics. That is where, as Nia is saying, we have got to work out what is the best way of ensuring, perhaps by some degree of cooperation, having regard to your independence and ours—this Committee are independent too; we are not Government—that we get across what it is that really matters in relation to the manner in which European legislation is impacting on people.

Peter Knowles: Indeed. When you get that debate in the Floor of the House, just by way of reassurance, again going back to audience figures, last Wednesday, the debate in the afternoon reached an audience of 110,000 at home—I do not know how many in offices—on BBC Parliament. When you achieve that, you are also achieving quite a lot of attention. The Backbench Business Committee in October 2011 scheduled a debate on the referendum, and we got to nearly half a million that day, so it does work.

Mary Hockaday: Again, you can hear the sense of the spread of what we offer from very general to, not through to more specialist Radio 4, through to even more dedicated for Peter. Even in the most general news output that we are doing, what you have just talked about, of course, is very interesting and we know that our audiences are interested. We know that the Prime Minister’s speech, again, was something we got good audiences to across what we did, and there was real interest in that. There is no doubt that that speech was not the beginning of something; it has grown out of years of debate. Nonetheless it was an important moment that has focused audience attention, which means that this essential question of Britain’s place in Europe is very live, isn’t it?

Chair: It is indeed.

Mary Hockaday: So the debate later this week about the budget is another way of getting to the point that concerns this Committee, which is who decides what happens to Britain and its people. That is something where you can illustrate in a concrete way the jargon of repatriation of powers. You can bring that down to the European Arrest Warrant—good or bad, in or out?

Q214 Chair: Do you think there is a pro-European bias of any description in the culture of the BBC or would you say that that does not exist?

Mary Hockaday: What I live and breathe with my teams in the newsroom is all the time attempting to make independent judgments about what matters, what is important and then to make sure that we provide a really broad range of perspectives and voices.
Chair: I will give you an example. Last week, the influence in the European Union committee was set up—I forget what they call themselves now—with Kenneth Clarke, Heseltine and Mandelson, etc. At 6.20 we had the internal Commissioner Barnier, who came on. He gave his explanation of why the single market was so incredibly important to the United Kingdom. There is no suggestion that there was anything wrong with it, but that was what was said. Then we had John Curtice and a description of the European opinion polls. Then we had Paul Walsh brought on as the other side. He was asked about Diageo, and then almost immediately asked, “But why did you sign this letter supporting the Prime Minister, because you are a Tory Party donor are you not?” This seemed to me like a bit of an ambush. Then we had 10 minutes of Ken Clarke. I have to say to you that listening to that programme on that morning did not quite fit in to the description that you have just given us. I can only say that that was carefully orchestrated. That is what it looked like and that is what it sounded like. I simply want to know, is that something which you would regard as the manner in which you would expect the impartiality and Public Purposes to be put forward?

Ric Bailey: Could I have a go at that, Chairman? What we have been talking about here all the time is editors making news values. They are trying to look at the world and make judgments about what is happening. On that day, it was, as you said, something that was launched and that was something we were covering. But if you reduce every single programme down to a mathematical judgment of having to balance every single item according to a stopwatch or a formula, that is not very good journalism, frankly. Impartiality is something that a programme like the Today programme has to achieve across the range of its output. It does that by making judgments consistently about the way the stories it covers are taken, about who the guests are it invites. On any one day it may give due weight in one direction.

Q215 Chair: Do you really think that the due weight is given in the other as well?

Ric Bailey: Yes. We have had a very wide range of voices, right across the spectrum. If you look at what all our current programmes do, particularly the Today programme, you will see a very wide range of voices on all of these issues. That is the responsibility of the editors to do that. It is to step back and think across the range of our output, though, on any one particular day, we may have been pursuing that particular angle and we may have needed those voices. You cannot pull the audiences on to these issues before they are there, sometimes. A lot of what we are doing is trying to introduce people to these stories and analyse and explain them as they come into the news.

Q216 Kelvin Hopkins: There is one great yawning gap and that is the left critique of the European Union, which does not feature at all. I know you have difficulty because what you think of as the left comes out as Blair’s former speechwriter. He is frequently on Newsnight; I forget his name now.

Mary Hockaday: One kind of programme we have not touched on is the Radio 4 weekly current affairs stable and programmes like Analysis. Last autumn, they did a whole programme about the relationship of the left to Europe, and Gisela Stuart was a very prominent part of that. I do not think that is right. To echo what Ric says, the other thing is just because somebody appears, it does not mean they are getting a free ride. Our role with whomsoever we are talking to, from whichever part of the spectrum, is to ask the questions we believe the audience wants answered and to challenge and probe. One of the things that the Wilson report also said was a comment about ensuring, while it was very important that we reflected the debate about Europe from within Parliament, that we were not only seeing it through the prism of Parliament. One of the things that we have worked hard at in the last few years is ensuring that the breadth of opinion that we bring to bear comes not just from within Westminster and not just within the European parliamentary institutions but also from business. For instance, around the day of the Prime Minister’s speech, we were hearing from businesses large and small, hearing from fishermen, farmers, hauliers, doctors, all the people affected sometimes by these debates.

Q217 Chris Heaton-Harris: The three of you nodded to the Chairman, convinced of your own impartiality on these subjects. Why is there this review that the Trust is leading?

Ric Bailey: As I said, that is the Trust’s job. It is the Trust’s job to review what we do. It chooses different subjects from time to time; it has chosen impartiality and it has chosen this particular area and so we will see.

Q218 Chris Heaton-Harris: This was led by complaints from your audience about your partiality on certain subjects, the EU being one of them. It is not what the Trust does on a regular basis; it is what the Trust is having to do because it received a number of complaints about audience views on your impartiality.

Ric Bailey: No, that is not true.

Chris Heaton-Harris: That is what Mr Patten said. I thought you might say that is not what it is about. I have Mr Patten’s speech to the Broadcasting Press Guild of last October up on my iPhone because I knew you would go down this particular route. It says it was led by complaints.

Ric Bailey: That is slightly different. The Trust is not simply leading on complaints. We are all part of the licence fee payer—there is the licence fee payer trusts the BBC more, by absolute streets, than it does any other news provider. Interestingly, if
you look at all of those, the most trusted news provider, even amongst those people who do not choose the BBC as their first provider of news, is still the BBC by a long way.

We are not complacent about this; I promise you we are not. We absolutely understand that impartiality has to be our most important, unique feature in the way that we are funded, in the way we have a relationship with the British public. We do not take that for granted. We spend an awful lot of time and self-analysis trying to get that right. We do not get it right all the time. But that is foremost in the mind of every journalist I have ever worked with in the BBC — all of Mary’s journalists, all of Peter’s journalists, whenever I talk to them. I have never met a BBC journalist who did not have impartiality right up there as their most important feature.

**Q219 Kelvin Hopkins:** I am a passionate believer and supporter of the BBC. It is like the NHS; it is something in my DNA. There is no question there. But on certain political issues, and in particular European issues, I know you have difficulty. In innocence you pick a Labour spokesperson, a Liberal Democrat and a Conservative. But you might choose, for example, Mandelson, Heseltine and David Laws. They are indistinguishable from each other in their views on Europe. In fact, Lord Heseltine might well be to the left of the other two. But if you picked Liam Fox, Menzies Campbell and Tony Benn, you might get a different approach. You might get a focus on, in my view, the complete failure of the eurozone economies, which is leading to devastating problems for Spain and Greece and whatever.

**Ric Bailey:** We are aware of those distinctions. Certainly on the European debate, we do not just go down party lines; it clearly does not make any sense because there are different views across all the parties.

**Q220 Chair:** That is one of the points that might be made. The Public Purposes in itself is not defined by reference to party. It is public policy and because the European issue covers such a range of matters on which the British economy as a whole depends, and which is related to it, then the question of impartiality, ensuring that within Public Purposes you get the range of opinions, is essential. This is what I think Kelvin is rightly referring to. It is absolutely essential not to have a whole stream of people who are coming from one corner of the argument. It is vital that people can get a balanced view.

**Mary Hockaday:** Absolutely.

**Ric Bailey:** I would agree with that.

**Q221 Mr Clappison:** I hear what you say on this, can I gently suggest to you an example of where you failed either to be impartial or to give the public a proper understanding in the not-too-distant past? It is one that may have implications for the future. That was the way the BBC dealt with the Treaty of Lisbon, which is now about five years ago. We had a series of debates on the Floor of the House of Commons and they were hardly shown on BBC television at all. I do not think any effort was made to explain the significance of the Treaty of Lisbon and the changes which it was making, giving more power to the European Union. If I may say this, and I do not mean it as a personal criticism, the then European correspondent of the BBC — not the present one by any means — dealt with the views of those who were critical of the Treaty of Lisbon in a very dismissive way. How do you respond to those complaints?

**Mary Hockaday:** I could, but I will not, read a long list of the coverage of the Lisbon Treaty. Like many of these stories, it was a really dominant one. With the long run-up, then the long process of argument, ratification, referendums, then the signing and the final ratification in coming to law, a story like that we would cover, and we did cover, very thoroughly from a really wide range of perspectives. Of course Mark Mardell, our Europe Editor then, was very prominent in the coverage. I do not think that he did treat people with disrespect in the way that you say. Our Westminster team and our politics correspondents were also very involved, as were some of our business and economics team, and indeed some of the specialists involved in particular areas of policies.

**Q222 Mr Clappison:** If I may interrupt, your first answer is very interesting. You covered the process whereby the Treaty came into being, whereby it was ratified originally at the end of 2007 by Gordon Brown. The debates in Parliament came after that. You never mentioned those at all. They were not shown on television; no effort was made to say that Parliament was debating this very important treaty that was changing the way in which we are being governed. I have great respect for what you have said so far. But on this issue, that was the way it was, I have to say.

**Mary Hockaday:** It was the thread through all the coverage, including the aftermath. From memory — as you say, it was a few years ago — in general news terms we did report because so much was at stake. We all understood that. That was the thread right the way through. We knew perfectly well this represented a really important constitutional moment for this country, as it did for all the countries of Europe, which is why the passage of it and the arguments that happened in many different countries and populations was a very important part of the coverage; it was a way of illuminating exactly what you are saying in terms of what was at stake.

**Mr Clappison:** Correct me if I am wrong. In our Parliament, the debates we had over a series of days were hardly ever shown on your general news broadcasts.

**Mary Hockaday:** Well, my memory is that it was...

**Chair:** Maybe we can resolve that one when you have a chance to go back and have a look at that.

**Mr Clappison:** I am not criticising the present European correspondent at all.

**Q223 Chair:** Could I come back to the Wilson review? I would like to concentrate on this for a moment. Following the Wilson review, which was in 2005, the BBC governors issued a statement responding to the criticisms, which I am sure you have just referred to. What urgent action was taken? I am referring to paragraph 3 of the report. What new
measures were adopted—paragraph 5? Where is the evidence that this was done? What did the report on progress state in the summer of 2005? What is the evidence of the completion of the implementation of those new measures and the proposals for monitoring the progress by May 2006? In other words, what happened as a result of Wilson? What do the papers demonstrate?

Ric Bailey: The first, most prominent thing that happened, which has already been alluded to, and which came right out of the Wilson report, was to give more prominence to the European story in our domestic output and to give a higher level of expertise in the Brussels bureau, was the appointment of a Europe Editor, Mark Mardell. That did make a change because it put it in the sense that you have your Political Editor, your Business Editor; to give somebody that status does make an impact on the bulletins and I think it made a big difference to—

Q224 Chair: A great deal can depend—and I am not criticising individuals here—on what the views are, if they are views held by an individual who may or may not come at it from a particular point of view. I am not talking about the participants in programmes, because you can balance those off. But if you have somebody—

Mary Hockaday: It is irrelevant what the views of somebody who takes a BBC job like this are. Their job is to report the facts as they find them and impartially. Their own views do not come into that.

Chair: Excellent.

Mary Hockaday: We talked in general terms about the audience’s regard for the trustworthiness of BBC news. That includes on Europe. They regard us as the best provider and the most trustworthy provider for coverage of Europe.

Q225 Chair: I will move on to the BBC management response to the review. This was a serious review. There were very high powered people on it. They looked at it and said urgent action was needed. You are telling us that the urgent action has been taken. We are now asking the question where that is going to—

Ric Bailey: It is all. In respect of the then proposals for the referendum, because there were very specific proposals, can the Committee see the details of the work that was done on that? It is all in the can, as it were. How do the EU planning meetings take account of European scrutiny proposals? Do you have planning meetings that deal with them?

Mary Hockaday: We have a whole series of planning meetings, which cover a great range. The Parliament team here and in Brussels will be focusing on their particular areas. As Peter said, the information and the press releases about all parliamentary business will come through and be available for the planning meetings to look at and make decisions about. There are other important recommendations in the Wilson report around training.

Q226 Chair: What I am driving at is: you have a report, it comes up with some specific proposals and it is urgent, it is required, it has to be done. All we are asking is, what happened?

Ric Bailey: The biggest single thing, which made a real impact on air, was the appointment of a Europe Editor, and that was a direct result of the recommendations from Wilson and the management’s response to it. It also called for a broader range of voices. That was something that, if you look at our coverage since then, we have started to take into account as much as possible.

Q227 Chair: We are making progress; is that the answer?

Ric Bailey: If you look at Daily Politics, for instance, it is covering the whole of politics, but the amount of coverage of what happens in Europe in the Daily Politics, irrespective of the special Politics Europe programme it does once a month, just in its normal coverage, is enormous. With what has happened online, with Democracy Live and its own area about Europe, there is an awful lot more, and there are more opportunities. What is also important is the link between them is there as well. When we are covering European stories on the main bulletins—and it is hard to break through sometimes with more detailed stuff—when we get the opportunity to do big European stories, you will often see the link to the online site where people who want to know more about it get the opportunity to do it. There is the trailing to what Peter is doing on Parliament. The ability to get across to more of our audience what we are doing and to do more has changed quite a lot.

Q228 Chair: Do you find it a bit irritating that we are asking these questions?

Ric Bailey: No.

Mary Hockaday: Not at all.

Q229 Chair: Good. I am so glad, because this is the first dialogue that has taken place on this question within Parliament on the European question. The Wilson Committee report was 2005; there were requirements to complete the stuff by 2006. The Charter then took over in 2006, and some might wonder what happened to all the work, now that you have the Charter?

Ric Bailey: The other thing that came out of that was the need for better training for journalists. A few years after Wilson, there was a mandatory online course for well over 2,000 journalists who went through a reporting the EU course. Soon after that, the College of Journalism was developed and that has its own area.

Q230 Chair: You could not have done it better. You got my next question straight on the nail. I was going to ask you, what is the curriculum for the College of Journalism in relation to European matters and scrutiny of European legislation? It would be interesting to hear.

Mary Hockaday: The College of Journalism website is now externally facing, as well as internally facing for our own journalists. Anybody who is interested can see this material. A lot of it is about trying to explain the institutions, what they are, how they work, what their focus is on. There are particular sections on the decision-making process, on the budget process.
and how the money works. There is background material on key figures, and also material that helps understand your point, which is about how what happens in Europe relates to this country.

Q231 Chair: What are the qualifications? You get people who have degrees in various subjects giving the lectures, all that sort of thing. As somebody who takes an interest in the extent to which people have looked at these questions in detail and in the broad landscape, what sort of qualifications do they have? Do they come from academic institutions?

Mary Hockaday: The material is offered as a series of online modules. They are developed by our own College of Journalism.

Q232 Chair: Can we see them?

Ric Bailey: They are publicly available.

Mary Hockaday: It is not so much lectures or outside experts, although a lot of outside expertise has been drawn on. To be honest, it is a bit like what we try to do with the audience for our own journalists. For busy journalists, we are trying to make the training modules clear, easily accessible, divided into chunks so you do not necessarily have to do it all at the same time, to serve the purpose of helping them do their basic journalistic job better.

Peter Knowles: The correspondents on Today in Parliament have contributed a lot to those training modules. That is a real centre of expertise and knowledge.

Q233 Chair: I hope you do not think that we are somehow asking questions that should not be asked.

Mary Hockaday: No, not at all.

Chair: I am sure you agree that these are very important: it is the old business of who guards the guardians? The question is, who are the people who are providing the basic information? Where are they coming from? When the researchers sit down in the middle of the night, for example for the Today programme— I cannot believe John Humphrys and the others invent all the questions off the cuff; they are sitting there and being fed certain lines of inquiry— it is not unnatural that we would be interested in the base of the research that goes into that.

Ric Bailey: In the end, that is the job of journalism; that is what journalists do.

Chair: That is what we do in the Select Committee. We ask questions, like you do.

Ric Bailey: Absolutely. Part of that is to make sure that the people who are doing that work understand the EU and the issues, and I think the level of understanding now, compared to where we were in 2005, is much, much greater. There is much more material for them to go at. Here we are looking ahead now to 2017 and a future referendum. That will only develop. At some stage, we will need to give that another level of priority as we move towards that and it becomes more and more dominant.

Q234 Chair: If you look at each of the five principles that the Prime Minister enunciated, and then you ask the question, “Who has views on this side of the equation; who has views on that?” then you are moving quite rapidly into an area where you can get the kind of balance that is required.

Ric Bailey: We are not too early a stage to think of it in a binary way, if I am being honest. There is a lot of water to pass under the bridge before we get there. Certainly, the more prominent it becomes, the more we will have to explore that. As we get nearer to a referendum, then it will at some stage become that very binary issue.

Q235 Kelvin Hopkins: I am still concerned about the pressures on you from outside. I accept what you say. There are pressures, though. I remember some 12 years ago, Alastair Campbell came to speak to a group of Labour MPs and we had a big meeting. The subtext of what he was saying was very clear. Unless the BBC gets in line with us, we will make trouble for them. That was his subtext. It was very clear. The pressure coming from that particular regime was very powerful indeed. I think it may have relaxed since then; I hope it has. At that time, the BBC was under some threat. I was very worried about it. Can you say those kinds of pressures have gone away?

Ric Bailey: No, not at all. It is part of the job. People on all sides have always wanted to influence and pressure the BBC for those very reasons— because of that chart I showed you. People believe what our journalists and our news bulletins say. So, of course, people want to influence that. They want to be part of it. They want to get their faces on. They want to stop people being on that they do not want to be on. Part of our job is to resist that pressure. If we were all being very chummy about it and we were never getting pressured, then we would probably not be doing our job properly.

Q236 Kelvin Hopkins: There is one other point, which happens here in politics, less so now than it did, because we now have elections of Select Committees and Chairs and so on; it is much more democratic since the Wright reforms. There was a time when we would have Select Committees which would have numbers of Labour, Liberal Democrat and Conservative Members, but certain key people were kept off Committees. I was one of them; I could not get on a Select Committee for love or money for five years. After the Robin Cook reform, I managed to get on a Select Committee. My good friend Diane Abbott was taken off the Treasury Select Committee because her views did not fit. In all spheres, if you have one person who might take a dissenting view or a very different view then it might cause difficulties. Very quietly, you manipulate the membership so it is quiescent, it goes along and there will not be any problems, even though they might have labels that say Labour, Conservative, Liberal Democrat, or whatever. Politics works like that in here. I wondered if, at the BBC, those who appoint people to positions and committees are subtly making sure that the more difficult people do not get into the more sensitive jobs.

Ric Bailey: Sorry, which jobs are these?

Kelvin Hopkins: Journalists, editors, producers of programmes.
Ric Bailey: That does not ring any bells with me whatsoever.

Q 237 Kelvin Hopkins: You have obviously not been in Parliament.
Ric Bailey: In Parliament, we are used to that all the time. If you are talking about casting Question Time or Any Questions or anything else, there is a lot of pressure from the parties to have on who they want to have on.

Q 238 Chair: And who they do not want on. I have never been on Question Time or any of the other programmes.
Ric Bailey: Sorry, I did not want to go there, Chairman. It is part of the cut and thrust of our editorial independence and decision making. Sometimes those are the people we will want on, and sometimes they are not. There is a weekly tussle in those areas. That seems to me part of a perfectly normal and not particularly sinister way of conducting quite a healthy politics.

Peter Knowles: The analogy I would draw in Parliament is the effectiveness of the Backbench Business Committee. It has been hugely effective at bringing debates onto the Floor of the House that parliamentarians want to discuss, not necessarily Government. Time after time, it has found issues that both Parliament and the world outside want to talk about.

Q 239 Chair: Are you entirely happy in your own minds—I am not asking this in a difficult sense, I hope—in the wake of Wilson, in the wake of what is coming through Prebble, because of the increasing impact of the European question both in respect of our own European scrutiny and the legislative process in Parliament as a whole, that you are getting into the right arena? As far as you are concerned, whatever the past may have been, are you now fully engaged with making sure that the British people have a completely impartial, very well balanced contribution from both sides of the equation, not on party political lines but in terms of Public Purposes? I suppose that is one of the things we are interested to know about: that you feel comfortable that you are getting into this and you are going to do it really well.

Peter Knowles: Before we hear some broader answers, there is one specific thing that does relate to your question and it is something I have been hearing at several points in this inquiry. It is really interesting. It is the idea around having dedicated Europe Questions taken on the Floor of the House. I realise what the problem of that is in terms of its cross-cutting nature, which Ministers appear and how you do it. 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.

Q 240 Chair: You do, I am sure, appreciate that as a Select Committee we are not beholden to the Government. You are not beholden to the Government. We both have our own independent view. We are an all-party Committee and we come at it from different points of view. The reality, therefore, is that we ought to be aiming at and trying to achieve the same objective. We have a duty to the public at large to ensure that they get a balanced view of what is going on. That is why we select our witnesses very carefully to make sure they do not come from any one side of the equation. In the same way, perhaps I might invite you to consider how your interviewees are chosen, what questions are put to them and what are not put to them. We are all in the same boat in this respect. If there was any suggestion that somehow either you or we were falling down in that impartiality and that independence, then we would both therefore feel that we were not doing the job that we were set up to do. Would you not agree with that?

Mary Hockaday: To answer your question, we are enormously engaged in the mission you described in terms of—

Q 241 Chair: Are you glad that you came along today to discuss it?
Mary Hockaday: Perfectly happy; it beats what I might have been doing back in the office. More seriously, you asked whether we are satisfied. I would say that I am broadly satisfied but never complacent. To the point you make, it is about being engaged in a continuous way. We reflect very hard on what we do to ensure that we are all the time on behalf of our audiences fulfilling our Charter obligations, including impartiality.

Q 242 Chair: Do you think you will be looking at the European scrutiny programme, the way in which our Committees are constructed and all that goes with it?
Peter Knowles: I would be very interested to hear what the findings of this inquiry are. As I have said earlier on, you have taken a very difficult question and are tackling it head on, which is what is effective in terms of European scrutiny, what makes a difference. It will be really interesting to know what you conclude.

Chair: Scrutiny into scrutiny.

Q 243 Nia Griffith: I would like to ask you about regional coverage, how your regional teams access information about European issues and if they are aware of the House of Commons outreach teams who can advise. Would you like to comment on whether you think there is a difference between the way the regional teams in England approach this, and how the teams you have in Wales and in Scotland and their own devolved administrations approach the matter?
Peter Knowles: I know there are examples of work in the regions with the regional outreach offices. My awareness here is of the outreach effort that is based centrally at Westminster and that comes through in terms of the lecture we talked about that the Chairman is giving, the Youth Parliament, and a whole range of other activities. If the regional outreach teams wish to make contact with us and see if there are other ways we can work with them, they would be most welcome to get in touch.
Q244 Nia Griffith: How do your regional people usually access information about European issues; just through your ordinary feed internally or what?
Ric Bailey: We are very well hooked up these days. They have representation in Brussels and Westminster.

The regions are now part of the same departments. Structurally, they are part of BBC News, in that sense.
Chair: I think that is everything for this afternoon. Thank you very much indeed. I will call the meeting to an end.
Wednesday 13 February 2013

Members present:
Mr William Cash (Chair)
Michael Connarty
Julie Elliott
Kelvin Hopkins
Chris Kelly
Penny Mordaunt
Jacob Rees-Mogg
Henry Smith

Examination of Witness

Witness: Ms Gisela Stuart MP, Member, Select Committee on Defence, and Chair, PLP Departmental Group for Defence, gave evidence.

Q245 Chair: Thank you very much for coming. I will ask the first questions. What, in your opinion, are the strengths and weaknesses of the scrutiny system in the House of Commons? Secondly, to park the question, if you had to choose a scrutiny system from elsewhere in the EU, what would you choose and why?

Ms Stuart: I was looking up in the dictionary the word “scrutiny”, to put it in context, and it had at the bottom of it the phrase, “It rhymes with mutiny”. I thought, well, that’s the weakness of it: you can scrutinise but you cannot have a mutiny, in the sense that you can observe but your actions have no, or very little, consequences. In the parliamentary process, when a Secretary of State comes in front of you he or she will have made a decision they will have to defend—even if they are in a coalition, there is a kind of trail of their own decision making that can be challenged—whereas in the European sphere, Ministers will come in front of you having done some trading with 26 other members, and in a sense you very rarely are allowed or able to unravel those kinds of things. It is a fundamental political weakness, which has to do with the institution. As for its strength, if you believe, as I do, that democracy is a system of government by explanation, you would probably go further. Few other systems really go through things with such care and attention to explain the things for those who are willing to listen. There is a problem that there are very few people out there willing to listen, but that is quite another subject. The system I like most I do not think we could operate, and it is a kind of combination between the Finns and the Dutch. The Finns will have a determined slot, which is regular, where everybody turns up—I have been to some of their sessions—and the Dutch bring the MEPs much more into their system as well, which I think is a strength; it is a kind of dialogue where a major partner is missing.

Most continental governments are coalition governments. We are just beginning to experience coalition government, and I speak for myself here but I do not wish this to become a particular British tradition; I am quite happy with not having coalition governments. However, countries that tend to have a history of coalition governments bring in their Parliament at a much earlier stage. The only final observation I would make is that I would be very much against Parliament mandating its Ministers as they go into negotiations, for reasons I would be happy to explain.

Q246 Kelvin Hopkins: Our current process begins with a sift by this Committee, of European Union documents, according to their legal and political importance, advised by our excellent advisers. How aware are Members and others of this work, and what use is made in the House of the information in the reports and on our website?

Ms Stuart: I am right in assuming that you still meet in private for those?

Kelvin Hopkins: Yes.

Ms Stuart: That adds to the problem: even if there were anybody out there willing to listen, they cannot observe you, and I think that is a problem. To be brutally honest, I do not think people are very much aware of the work you are doing. The evidence for that is probably best demonstrated when we have debates on the Floor of the House. We all know each other so well, those who take part, and we could probably write each other’s speeches as well. There is very little new blood coming into the debate. Just to give you one example, recently I sat on one of the EU Committees and we looked at one of the documents: it was quite clear that the Front Benchers were not even aware of how those debates really flow, so there is very little awareness and very little appreciation.

Q247 Chair: Do you not think that that is the fault of those who do not take an interest? The material is there. It affects so many people in their daily lives—horsemeat might just be one example, but there are so many others—and yet you get this fantastic amount of information about the consequences, but very little engagement in the House by Members who have access to the information, through the Vote Office or whatever. We do the job, but the question is whether in fact people engage with it sufficiently. By the way, you may be interested to know that we had a similar response from the BBC last week, who said, “It is too complicated for people to understand; that is why we do not give it the priority.”

Ms Stuart: If I might say so, the problem is that it lacks the drama, the processes are so drawn-out. I negotiated the opt-out of the working time directive for doctors in 1999, as a Health Minister, a process that started in 1992; the decisions and consequences of that started to hit the NHS in a way that people were complaining bitterly about in around 2008-09,
18 years later. At what stage does it hit the news? When it has political consequences.

The second thing, which is a fundamental flaw within the system in which we work, is that we have a "delete" button of the political process, and it is called the general election: whenever a Government comes in, you wipe the slate clean and you start anew. The European Commission has no similar process. The only way you can ever kill anything is by negotiating it to death, until it is so diluted or nobody has an interest in it. The Prime Minister, the other day, heralded the conclusions of the patent agreement. I have not checked before, but I think that must have been negotiated for the best part of 25 years, because I remember teaching about the negotiations of the patent agreement when I was a law lecturer in the early 1960s.

Chair: Very interesting.

Q248 Kelvin Hopkins: I just want to take up one point, Gisela. You talked about meeting in secrecy. The reason we meet in secret, or have private meetings, is that we can take very candid advice from our specialist advisers, and we have these excellent papers prepared every week, in detail. If we did not meet in private, we could not have those papers, none of the information would come out, and we would be as confused as most other Members would be. At least we have this. Is it not possible that the other Members are bemused by all the European issues and they trust us to deal with the details?

Ms Stuart: I think they do trust you, but we are all elected politicians here. In all these years, I have never had a single constituent who came up to me on a particular issue that related to a European Union issue about which I could do anything in a Parliamentary context.

Q249 Chair: And yet legislation is passed day in, day out here, which is based on European directives, although understandably it is presented as an Act of Parliament implementing matters under Section 2, which you of course understand. When you are asked questions about the application of it in an Act of Parliament, what is really happening is you are asked a question about the European directive, but then it is already being implemented.

Ms Stuart: Even worse, Mr Cash, whenever there is something very contentious, the way out is to delay implementation, just to make absolutely sure that anybody who made that decision is no longer politically accountable for having made it.

Q250 Julie Elliott: How effective is the current scrutiny system in non-legislative policy areas, such as common foreign and security policy, and the common security and defence policy?

Ms Stuart: It is a very interesting question, because it is the last remaining area of the battle between national parliaments, the European Parliament and the European Union influence. In a sense, there are very effective bilateral agreements—for example, I am on the Defence Committee, and we have regular meetings with our French counterparts—but it is not done on an EU level. I was very surprised on the last Committee that I was on, dealing with defence procurement, that we had an area where, for years and years and years, the British Government was adamant that defence procurement should not be part of the single market. I confess I was taken aback, and I thought, "When did this change of policy happen? When did we agree to this?" Clearly we had, and it had passed me by. I have not yet quite allocated guilt, but clearly it is my fault that it had passed me by. It is one of those areas where there is very little substance, and when there is, it is very difficult to get hold of it. In preparation for the meeting today—again, I am not sure whether you want to come back to this—I was highlighting that when asked questions—for example, the UK Government uses the opt-out on security grounds for 20% of its procurement, and when I asked the Minister in the Committee, "How do other countries do this? How often do they use it?" and even put a follow-up written question, I was told they could not give me an answer, which of course made the figure of 20% completely meaningless. If the French use it 95%, then 20% is really very low, but if you tell me the French use it 5%, then I wonder why it is so different. It is an area where, unless you have comparators, anything in isolation tends to be too freestanding to be meaningful.

Q251 Michael Connarty: You have already mentioned European Committees, or the one you were on. What is your experience of European Committees over the period you have been in Parliament, rather than just in the most recent period? What do you think they contribute to the scrutiny process? How do you assess their role in the scrutiny process?

Ms Stuart: Can I ask you what you mean by "European Committees"?

Michael Connarty: The Standing Committees to which you referred—the old A, B and C, which are now all mixed up.

Ms Stuart: When I first became a Minister, Jeff Rooker, who then was 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. I was reminded that the most horrendous meeting I had to do as a Minister was after we negotiated that British beef, following the BSE crisis, would be allowed to be exported again. There was a young MP called Owen Paterson who was my staunchest critic and attacker, and essentially as a Minister I had to sit there and know we had introduced about 20 measures, of which—I cannot remember it precisely—something like 12 were not really in our interest; three or four were neither here nor there, and the others we really, really wanted. As I went in there, I was told by the Agriculture Ministers, "You cannot touch this. This is a package. This is a deal. You cannot unravel it."

They are really good Committees—potentially, I think, a real nuclear weapon—because you are so
exposed as a Minister; you really cannot hide anywhere. However, because sometimes the negotiating mandate with which you go into the Committee is, “You cannot negotiate,” very often, you may politically get very little out of them. So that process, but perhaps taking place earlier. The real problem is, with those, we only enter the process once the deal has been struck, rather than before, and that is too late, whereas in Parliament we have a process by which Parliament indicates areas that it finds unacceptable and Government then has a period in which it can negotiate, either in the Commons or in the Lords. We have not got that in an EU context.

Q252 Michael Connarty: One of the things at the moment is that the European Standing Committees get about 35 debates referred to them per year. How do you feel about that? Is it too many or too few? Some years we have had a lot less than that. Do you think it is diminishing their impact if we have lots and lots of them? Do you think it is better to have lots of these kinds of debates in the Committees, where the Minister, as you say, has to come before Members?

Ms Stuart: It is difficult to say whether it is too many or too few. The only thing I would say is that the Committee of Selection might occasionally show greater imagination in who they put on those Committees. I know that if it has the word “Europe” in it, I am in the firing line, and I am definitely on it when it has the word “Defence” as well. That is fine, because I happen to enjoy them, but it is a bit like the debates in the Commons when the word “Europe” appears: it seems to be that in those Committees, friends meet again rather than seeing many new faces.

Q253 Michael Connarty: On that basis of membership, as you remember, when they used to be called A, B and C Committee, they genuinely were A, B and C Committee, because they had specific remits and a permanent membership. Do you think European Standing Committees would be more effective with permanent membership again, since they now are random selections, on the basis that it might develop Members’ familiarity with the subjects under the A, B and C?

Ms Stuart: At the risk of now contradicting myself, having derided the meetings of old friends, I think it would, and I will tell you why. The thing that troubles me most about anything to do with matters European, as I alluded to earlier, is it has such a long process of decision making. It is almost Dickensian: Jarndyce v Jarndyce is alive and kicking. I sometimes struggle with where the collective memory of these decisions is, given the short lifespan of most Ministers, given that even the veil of administration comes down once you have a change of government. A Parliament is uniquely placed to remember some of these things, and therefore a core of permanent membership may be very helpful.

Q254 Jacob Rees-Mogg: Thank you very much for coming to see us. The Irish Parliament and the National Assembly for Wales have recently mainstreamed—not that I think that is a particularly elegant word, but nonetheless that is what they have done—European business, which has given responsibility for sifting and scrutiny to subject Committees. Do you see advantages to this, or disadvantages?

Ms Stuart: I have been thinking about that. I think if you had a place where on the Friday morning or what-have-you matters European are discussed, that would be very useful. However, the question is: who do you hold to account, and who do you ask? I am searching for a political accountability, which tends to be within the position of our permanent representative in Brussels. My dream is that I would very happily mainstream UKREP to appear every Thursday afternoon for a couple of hours, even in Westminster Hall, and be questioned, because that would be interesting, and would get people’s attention, but I am just not sure that more people would engage. Unless you have the narrative to make the story of the scrutiny process interesting, which is very rare, I do not think we would get anywhere.

Q255 Jacob Rees-Mogg: I assume from that that you do not think it would be a good idea to pass the European issue onto departmental Select Committees, because they would not necessarily take the interest in it, or am I reading too much into your answer?

Ms Stuart: Yes and no. You are right in some ways: I think the departmental Select Committees are the right ones to look at the detail as to what has been agreed, and then you need to look at the implementation. I think the departmental Select Committees are uniquely able to do this, but if I go to the political accountability, we fall foul of the system because the deals that are struck in Brussels tend to be a trade-off between Committees: you get something in agriculture, and for that they take something off you in health, and for that you say you will change the train regulations. It is that bit that I think in Parliament, at some stage or another, we need to flush out. That is what political accountability is about.

Q256 Jacob Rees-Mogg: If I can go back a stage, when we were talking about the Standing Committees you said they lack influence because they come too late in the process and things have been agreed. Are you thinking, if you think departmental Select Committees are good at reviewing implementation but not a developing policy, is it perhaps our fault, as the European Scrutiny Committee, and we should push documents forward to debate at an earlier stage, which may be better able to influence the debate, or is it structural in our political system—the way the executive and legislature work—that we are never going to get it in time to influence the decision-making in a parliamentary sense?

Ms Stuart: It is structural, both inside here and in terms of the relationship with the institution with which we have the relationship. The stumbling block is the representation in Brussels, which is highly political in its decision making but utterly unaccountable in the decisions it makes, as well as the fact that when our Ministers go over and negotiate in Brussels, they too are politically unaccountable in the way they make the decisions. I say that having once
been a Minister who did a 180-degree turnaround on UK policy on a particular subject, because nobody knew that I had done that, other than the collective decision, because it hardly ever comes to a vote. It is a qualified majority; it hardly ever comes to a vote. I just sat there and said, “The UK Government agrees with Article 58.” There were a few people around the table taking a sharp intake of breath, and it went through.

Governments always change their mind, but at some stage they have to stand there and explain why they have done it, and I think that is rather good. The lack of accountability is structural here and there.

Q 257 Jacob Rees-Mogg: Going back to the Departmental Select Committees, I wanted to ask whether you think one member of each Committee should have a specific European hat to be the link person between scrutiny of European issues and their Committees?

Ms Stuart: I think so. I think you need to mark them. You need to finger them and say, “This is your can.”

Chair: Excellent. We are going a little faster, because one or two people may have to go.

Ms Stuart: That is okay.

Q 258 Chris Kelly: Is enough time spent in the Chamber debating European matters amongst “old friends”?

Ms Stuart: No, and I will tell you what my greatest gripe is: that there used to be standard debates ahead of the European Council, and that was absolutely essential.

Q 259 Chris Kelly: Should they be reintroduced?

Ms Stuart: Absolutely. I think I raised it in three consecutive Business Questions with the Leader, who got rather irritated with me. It is not Backbench Business Committee business, and it is no good saying, “The Wright Committee recommended it.” The European Council is not the back benchers’ business; it is the Government’s business, and similarly with the fisheries.

Q 260 Chris Kelly: Is a dedicated session for European oral questions in the Chamber feasible, given the number of subjects that could be covered? Would a cross-cutting question session in Westminster Hall be a potential alternative?

Ms Stuart: No, no—don’t relegate it to Westminster Hall. It is cold over there, and you can lose too many people as they cross it. A gain, my Christmas wishlist would be that it is at the level of a Deputy Prime Minister, who should be accountable for the negotiations done at European level, and there should be a dedicated Question Time.

Q 261 Chair: But not necessarily him every time?

Ms Stuart: It is kind of the combination of what a proper Europe Minister is. Tony Blair was almost there when he appointed Geoff Hoon to be Europe Minister, and I think probably, with hindsight, Geoff thought he was almost there. You would have a Europe Minister who is actually accountable in a cross-cutting way for the political decisions made at Brussels level. The reason that I say Deputy Prime Minister is that, when you think about it, it is a very significant political portfolio, so it is that accountability, with a senior figure who would answer them in the main Chamber.

Q 262 Chris Kelly: Should this Committee be able to refer documents directly for debate on the floor of the House?

Ms Stuart: Now there I am not sure on whose toes you would be treading. Would that have to go through the Backbench Business Committee? Can I plead “No comment”? I am simply not sufficiently aware of the ins and outs of this.

Q 263 Chris Kelly: Finally, should there be an annual debate in the Chamber on the Commission work programme?

Ms Stuart: Not only should there be an annual debate on the Commission work programme, but I think Commissioners should come and be questioned.

Q 264 Chris Kelly: Rack up their air miles?

Ms Stuart: They can come by Eurostar, but I think they should come.

Q 265 Chair: You raised this next question yourself, I am glad to say, but in a way you almost answered yourself the other day. Do you think there is scope to increase the democratic accountability of UKREP, and if so, how should this be achieved?

Ms Stuart: The decision-maker at UKREP at the moment is, within Foreign Office, one of the senior political appointments—one of the big three appointments—and I think whilst probably our constitutional arrangements would not allow us to question that person, there should be a Minister who is accountable for those decisions. I could see no problem in having a Minister whom we would expect to, say, spend one or two days a week over in Brussels.

Q 266 Chair: Would you be interested to know, if we are going to interview Sir Jon Cunliffe or somebody else in a senior position in UKREP, to ask him the very questions that you are asking other Members and other witnesses about their work, given what you have already said about majority voting? You may or may not know that there is a thing called VoteWatch, through which Professor Simon Hix demonstrates that of all the possible votes in favour, 91.7% are cast in favour of all directives and decisions over the last three years. Of every single directive, decision, regulation—the lot—91.7% are agreed in the Council of Ministers. Did you know that?

Ms Stuart: Can I caution you here? No decent diplomat would ever allow their Government to be seen to have lost a vote. 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."

Q267 Chair: How do you think Parliament could be better informed by UKREP of what might be called horizon scanning, and the likely negotiating positions of the Government and Council?

Ms Stuart: That is a really, really difficult question, because to be effective, given all our time constraints, someone somewhere has to make a political judgment as to what is important enough to flag up to you. Given that we would be asking the Government, someone who works for the executive, to flag up to Parliament something that Government may find slightly difficult—it is a bit of a tricky option. However, when I was on the Convention on the Future of Europe, I received the briefings you get from the Brussels parliamentary office. I am assuming they are still what you get.

Chair: Very much so.

Ms Stuart: I found they were gold dust. They were the most useful and most insightful pieces of information, and I have always rather regretted that, for reasons they explained to me—they felt they could only be as frank as they were because it was in the ownership of the Committee—that was not shared more widely. Something like those, though, because I thought they were the most useful.

Q268 Michael Connarty: What impact do you think measures introduced in the Lisbon Treaty—for example, reasoned opinion procedure and orange and yellow cards—have had on national parliaments and the European Union?

Ms Stuart: I genuinely do not know. I thought the system itself was too weak to threaten governments. The whole point of the red card was, in a sense, that there would come a point where you could really scare governments, and for that I thought the threshold and the period you had available was wrong. Given that governments are formed of parliamentary majorities, it requires a serious mutiny of a significant number of parliamentarians to really get the red card going. I always thought that to have that was useful, but the second thing which I tried to do but failed was to get the MEPs off COSAC, because I thought parliaments needed a network in which they talked to each other. The presence of the MEPs, I thought, was always sufficient in that they were caucus enough, in their self-interest, to scupper any kind of deals that national parliaments might strike.

Ms Stuart: I heard him say that, and I felt like screaming, "No!" The architecture of the European Union is the Commission, the European Parliament and national governments. I have no desire to make national parliaments a fourth element in that geometry. National governments and national parliaments—that is the unit. I do not want national parliaments to become an alternative to governments. However, it is the openness of the national parliaments in relation to their own—it is that interplay that I thought was much more important. Other than thinking, "No, I do not agree with you", I was not entirely sure that he knew what he was trying to say, other than to be complimentary about national parliaments in a way that would have little effect, unless you found more in that.

Chair: Parking your last comment for a moment, I am sure you would recognise, as the distinguished Member for Birmingham Edgbaston, that your electors enter the polling booth, cast their secret ballot—hopefully for you, no doubt, from your point of view—and they are doing so on the basis of a choice that they make in relation to the legislation that is promised them in a manifesto, which must not be underestimated. Do you not think that, when those representatives in conclave here in Westminster are confronted with a decision to be taken in implementing legislation and passing an Act of Parliament, the fact that it derives from a decision taken by qualified majority voting in the Council of Ministers, which may contradict the promises you made to your constituents or I made to mine, is a matter of real importance; and that, therefore, it is not merely a question of involving national parliaments, but there is also perhaps, in circumstances, given Section 2 of the European Communities Act, a case for Parliament saying, "That is what they have decided by majority vote, but we do not agree with it."? So the national Parliament, on behalf of the nation, would say, "We will disallow this and vote against it." What would your reaction be to that? It sounds democratic.

Ms Stuart: I have probably been around for too long, but if a Government has agreed on something at the European level, whether it did not use its veto or it was qualified majority voting, and Parliament is sufficiently rebellious to vote against it, if it then came to the Government being defeated—I am trying to think of something that would be sufficiently significant that despite the whipping system, the Government would be defeated on it, which—

Q271 Chair: You mean like the reduction of the budget, for example? On the reduction of the budget, it did actually for the first time only a few weeks ago. What I am saying is that Parliament is Parliament. If I could put it another way round, in the form of a question, do you not agree that we entered into the European Communities Act 1972 on a voluntary basis?

Ms Stuart: If I turn this around and say: yes, that debate where we all voted, and as I said, the Prime Minister became the 83rd rebel when he too wanted a reduction in the EU budget—
Chair: You mean he actually was.
Ms Stuart: Let us just turn this on its head. If he had come back with a deal that he had not been able to broker, and there had been an increase, I would be very surprised if he continued to lose the votes, and if he would have continued to have 82 rebels on his own side. I think it would have gone to a much narrower majority and the Government would have got its way.
Chair: Well, thank you very much for that.

Q272 Kelvin Hopkins: I have always been concerned about UKREP and the power there. He is the most political Civil Servant in a sense, and you suggested that the head of UKREP ought from time to time to come to Parliament and be somewhat accountable to Parliament, to explain at least, even if you do not have power over him. However, it occurs to me that it might be an idea to have a pre-appointment hearing before the head of UKREP is appointed, so that Parliament has some say in that position. We are now doing pre-appointment hearings for a number of other positions—the American style, I suppose, the BBC, because you make many decisions. The real difficulty is that of course the Civil Service is always in government and it rather likes a larger stage, so if I were a Civil Servant, I would think it is probably the best job to have, because you make many decisions. The pre-appointment hearing is a good idea, because we need to know each other, and there needs to be a familiarity. At the risk of really straying, one of the things that we in government did, which was, I think, not representative of the current Parliament, or indeed of popular opinion. Sir Jon Cunliffe is much more balanced.
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Q273 Chair: I will ask the last question, which is about Europe, the public debate in general and the media. We had the BBC in last week, and the transcript will be available quite soon. What role do you think that the Government itself, Parliament, the media, and in particular, I suppose, the BBC, because they are so prominent in terms of the listening audience of the nation as a whole, should play respectively in improving the quality of the debate on Europe?
Ms Stuart: I think they play an extremely significant part. I am glad to say that certainly over the last 12 months the BBC, for example, with Radio 4, has commissioned some programmes that look at a whole wider spectrum of views, and no longer acts as though, if you find fault with the European Union, then you are some kind of slightly deluded heretic who needs to be put right. They are much more detached. The two journalists, Tim Franks and Mark Mardelli, I thought managed to portray technically complex issues and appreciate the political significance in a way that engaged the viewer and the listener. However, there are very few journalists who actually can do that.

Q274 Chair: Would you be interested to know that last week Peter Knowles quoted something that James Brokenshire had said, which was by any standards complex, but then seemed to translate from that a suggestion that it was very difficult for the BBC to present information, contrary to what you have just said, because it was too complex for people to understand?
Ms Stuart: It probably has to do with the fact that the journalists themselves do not understand. Before I became an MEP I taught European Union law; I spent two years as a Minister in the Council of Ministers; I spent two years negotiating the European Constitution. If I now think I understand about a quarter of the real political reality, then I am having a good day. It is very complex, and 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.

Q275 Chair: Can I ask you, if you would be kind enough, to look, when the evidence comes out, at the questions we put to the BBC, for example? We asked a number of questions regarding, for example, the College of Journalism they have created. I do not know whether you are familiar with the Wilson report, which actually looked at this and the Trust said that the BBC had an urgent requirement to get its act together on the question of the treatment of European issues. You may well be right that things have improved, but it would be of interest, certainly, to us if you were to look at the transcript, in the light of your experience, and perhaps give us a few thoughts on what you think was being said by the BBC, and whether you think, in the light of what you have just said, there are any further comments you might wish to add?
Ms Stuart: Thank you very much indeed for coming.
Chair: It was a pleasure. Thank you.
Wednesday 6 March 2013

Members present:
Mr William Cash (Chair)
Mr James Clappison
Michael Connarty
Julie Elliott
Nia Griffith
Kelvin Hopkins

Chris Kelly
Mrs Linda Riordan
Jacob Rees-Mogg
Henry Smith

Examination of Witnesses

Witnesses: Chris Bryant MP, former Minister for Europe, Martin Horwood MP, Chair, Liberal Democrat Parliamentary Party Committee on International Affairs, and Andrea Leadsom MP, co-Founder, Fresh Start Project, and member of the Treasury Select Committee, gave evidence.

Q276 Chair: Welcome, all three of you. Could I simply say that we are extremely glad we have such knowledgeable people who have been involved in the whole of this process for a long time? Furthermore, what I am going to do is ask the questions, but, because there are three of you and there a whole lot of us, it will turn into something of a dialogue. I think it would be as well if we start with, shall we say, Andrea first, then Martin and then Chris, because we just want to try to get some form of continuity out of it, if it is possible. The other Members will all want to ask you, because it is not really quite the same as having a witness from outside, and you know the system.

The first questions that I am going to put are in relation to the current system—the system that we operate under already—and to ask a very general question and address this to Andrea Leadsom first. What, in your opinion, are the strengths and weaknesses of the current system in the House of Commons in terms of the sift—the manner in which this Committee sifts European Union documents according to their legal and political importance? When I have finished with you, you can go next, Martin, and then Chris, because we want to try to get some form of continuity out of it, if it is possible. The other Members will all want to ask you, because it is not really quite the same as having a witness from outside, and you know the system.

Andrea Leadsom: To start with, the very obvious which we sift? Committee can come in and ask any further questions. When I have finished with you, you can go next, according to their legal and political importance?

Martin Horwood: In terms of the strengths and weaknesses of the current system, I think one of the weaknesses of the current system, I think one of the...
The biggest difficulty that we face in this whole area is the fact that Europe is a bit of a specialist subject, although it touches on everything else. I have heard Members in the Chamber clearly not knowing the difference between the European Court of Justice and the European Court of Human Rights, and the Council of Ministers, the Council of Europe and the Council of the Commission and so on. That makes it quite difficult to garner a sufficient body of knowledge and up-to-date information and to get able to answer questions on what Government is doing or what the European Parliament, the Commission or the Council is doing. I think the sift works, broadly speaking, in that you do get a set of people with a degree of expertise, and you are well supported by clerks and advisers to be able to do that. However, I would say that I am not sure that all of the debates that I have done since the last general election have been very timely.

Q279 Chair: Are you referring to the debates in Standing Committee or are you referring to debates on the Floor of the House, or both?

Chris Bryant: Standing Committee. I have turned up when we have been talking about something which, frankly, happened nine months earlier.

Q280 Jacob Rees-Mogg: May I follow up on that, because I think that is absolutely crucial and something we were discussing slightly earlier? At what point do you think we should put debates forward? Should it be when the Government has made its position absolutely clear, we know what is happening and we are debating a decision, or should we debate it early in the process, in the hope that the House of Commons will influence what the decision ends up being?

Chris Bryant: From my experience of having been Minister for Europe, definitely the latter, for two reasons: one, because, regardless of which political party you are in, often the British interest is the same, and most Ministers will want to secure the British interest. There may be tweaks to that, depending on the political party, but not as dramatic as most would assume. It would also be enormously helpful to feel that you had Parliament behind whatever you were ending up delivering when you went off to negotiate on behalf of Britain, or if you had to tweak it so as to be able to come back and say, “This is the best I have been able to do.” It is like when somebody writes to the MP about the planning decision that was taken last night by the council. That is what it feels like all too often.

Martin Horwood: The most extreme example I have of this is a debate on the annual work programme, which is effectively the European equivalent to the Queen’s Speech, which we think was eight months after the publication of the document. That is completely hopeless.

Chris Bryant: And six months into the—

Martin Horwood: Yes.

Q281 Nia Griffith: Do you think that that would help engage more Members of Parliament if they felt that there was some point in saying something because it might influence the decision?

Chris Bryant: I think it would do two things. Undoubtedly, it would mean that it was more live and, therefore, people might say, “Actually, there is a chance of influencing something here” and might engage more people. Secondly, within the Foreign Office, or whichever Department it is, it means that the Minister will have to do a great deal more work before going off to their meeting, and the civil servants will have to come up with a lot more answers to complicated issues. I just think that it means that, when you turn up at the Council meeting, you could do a more effective job.

Andrea Leadsom: Could I just add to that that you cannot underestimate this issue of Members of Parliament not really knowing that much about the European Union? The quality of debate is partly a function of the lack of it. If it is always late and it is a two-hour debate in the Chamber at an unpopular time, people do not turn up, so they do not improve their level of understanding and knowledge. A no-tar reform I would advocate very strongly is that this Committee be given dedicated, allocated time in the Chamber such that it can then call for debates in the Chamber. It does succeed in doing that now, but informally, and I think it should be given formal time so that you then have to prioritise which debates should be for the entire Chamber to cover.

Chair: I hope we will not disappoint you, because there are a lot of other questions, and we will be coming to some of the points that will come up in the dialogue later. James, did you want to ask a question?

Q282 Mr Clappison: I think the question I had has been answered by Mr Bryant and Ms Leadsom in what they have said. My point is: can you understand the frustration of Members of Parliament who come to these debates in European Standing Committees, which are supposed to be there to help influence the Government’s position, to find that the decision has already been taken and that the matter concerned has already passed into law? There is absolutely no purpose which can be served, and that is an experience that I have had under Governments of all descriptions.

Andrea Leadsom: I was just going to add that it also really does not help that colleagues are whipped on to the Committee and are not even told, “This is what this is about and this is why we have chosen you.” To add to the fact that you get there and it is completely pointless, you also feel that, since it is about something you know nothing of, it is pointless. If it is too late and you are given no warning, it really undermines the whole process.

Q283 Michael Connarty: This is one for Chris. You were the Minister for part of the time when the last Labour Government abolished the permanent membership. They never gave any reason, other than the whips said it was easier to share the pain if you just stuck anyone on who did not happen to be very
active in anything else, rather than, as before, put people on who would learn about the issues for Committee A, B and C. I have never had any explanation from anyone as to why it was done—and I was Chair of the Committee at the time—or any excuse that made me feel it was justified, and many promises that it would be changed by the incoming Government, the one that is in now, which has done nothing. What is it all about? What are they afraid of? Is somebody afraid of something? Why did they do it? We have a shambles now, whereas at least we had something that seemed to make some sense before.

Chris Bryant: I knew it was going to be my fault and that there would be some speech that I could not remember. In fact, I think it might be even worse than that.

Q284 Michael Connarty: I do not think you initiated it but you were the Minister for part of the time.

Chris Bryant: I think I did. Wasn’t I Deputy Leader of the House and took it through maybe? Maybe I didn’t. Maybe I’m not as guilty as I think I am. What I remember, insofar as I remember anything, is that there was a balance. You were finding it difficult to get people to be permanent members of the Committee. You kept on begging me to be a member of the Committee, which showed how desperate you were. In all seriousness, however, I think there was a balance to be struck. The one thing that has disappeared since then is, of course, that we do not have the quarterly EU debates in the Chamber, which met some of the need for being timely, because they were before Council meetings, but they missed lots of other areas. I am sorry if I got it wrong.

Chair: Could I just mention that, because we have two sessions today—

Q285 Michael Connarty: Chair, I really find it is a key issue. I have another explanation for why things are not timely. At that time, there were not that many Standing Committee debates. The rule of the previous Chair before me, which I took on, was, “Be selective to be effective”, so you did not choke up the process by having lots and lots of Committees, which meant that, by the time you got to the one that was important, it was out of date. What I am worried about is this. It was not difficult to get people to come on to this Committee. When people were, as part of their duties as a Member of Parliament, put on to a Standing Committee, they normally turned up. Now, people do not turn up.

Martin Horwood: Can I just, through the Chair, say to Michael—and I do not know whether or not Chris remembers it—that I think it was the right decision. I do not think permanent memberships are the answer, partly for the reason that I mentioned earlier: that the more you have generalist Committees, you are missing out on the policy expertise. If I could be a permanent member of a European Committee, that is great. If I knew about foreign policy, I would have an opinion on an EU training mission in Mali. I know diddly squat about fisheries, so, if I get a whole series of things that are on different policy areas, I am not sure you do build up the expertise that is necessarily required.

I know there were three Committees—A, B and C—but, all the same, I think the more valuable thing to tackle is why it is such a low-prestige thing that people have to be coshed to do and turn up to. It is partly about—and Andrea mentioned this—the level of advance notice and the fact that you are presented with a doorstep’s worth of paper to read through, which you are physically incapable of reading in time; you discover it is out of date already. It is very heavily whipped and you do not seem to have much real input into policy at the time, so it is not a popular appointment. We need to tackle some of those fundamentals but try to, somehow, get to a membership of each Committee or each body considering these things that knows something about the policy and is more interested in discussing.

Nia Griffith: There was a slight specialisation with the three committees, which each had certain topics.

Q286 Michael Connarty: My point shows how the collective memory is fading. Any Member of Parliament can go to any Standing Committee. When we had fixed membership, you would often have people turning up with the right expertise, with the right knowledge. It was out of date. What I am worried about is this. Transport was one that took the interest of a former Member of the House, sadly now passed away, and she came and made some tremendous contributions, as did other people on other issues. It was not difficult to get people to come on to this Committee. When people were, as part of their duties as a Member of the House, put on to their own Select Committee, because what was coming to the debate was something relevant to their own interest. Transport was one that took the interest of a former Member of the House, badly now passed away, and she came and made some tremendous contributions, as did other people on other issues.

Another thing is that, if the public outside and the business community want to find someone to raise an issue with who is coming to the Committee, there is not a lot of point in raising it with someone on this Committee, because all we do is look at the political and legal importance. They would have a set of people with these three remits, who they could then send briefings to and raise points with. We have no contact point with the outside world at all in European business now, apart from the generalist one. What has been lost is not just expertise of the members, but also an outward-facing image of a Parliament that is interested in the impact of European decisions on the populace.

Andrea Leadsom: May I make a comment, Chair? It certainly seems to me that limiting this Committee’s remit to looking at the political and legal—is it?

Chair: The political and legal importance.

Andrea Leadsom: It seems to me that, in a review of EU scrutiny, that should surely be expanded to include “looking at the merits of”, as opposed to simply “the political and legal importance of”, and it should be far more widely advertised as to what the Committee are looking at. Fundamentally, the reason for the lack of engagement is not a lack of interest but a lack of understanding, knowledge and information. The same holds true for the Standing Committees: if all colleagues were asked, “What part of EU policy are you interested/expert in?” and then they were told, “There is something coming up that might be of interest to you”—even if they were subsequently told, “By the way, you are whipped to be on the Committee”—it would be a far more attractive way of engaging with people. The problem is, as it stands now, Foreign Affairs questions includes a tiny little bit of “Europe if
'They have permanent membership. The idea of separate European questions.

Q287 Kelvin Hopkins: On permanent membership, I wanted to add my own questions, if I may. I was, perhaps unusually, member of a Permanent Committee (in Brussels) from 1997 until they were abolished, and I have been an active member of Standing Committees ever since, and on this Committee, so I have probably attended well over a hundred of these Committees and I speak at every one. I make a point of speaking, to make sure they are realistic. I have, however, seen a difference.

In the early days, Ministers used to get very keyed up and they were very concerned. The members took the job seriously, everyone would speak and there was a real teasing-out of issues. Now, they are much more like SIs. They are not quite as casual as SIs, but members come along and say, "I have never been to one of these, Kelvin. What do we do?" Ministers know that they are going to get an easy ride. Having been a Minister, is it the case that Ministers like an easy ride and do not want to make a rod for their own backs, the Civil Servants do not have to work so hard, and the issues drift through without as much difficulty as in the past? Was there a sense that Government, in broad terms, likes an easy ride and having ad hoc membership is easier?

Chris Bryant: I do not particularly like an easier ride. I quite like the way it is complicated and difficult, but that is just a personal preference and a style of life. However, if I am very honest, no Commons Committee got anywhere near as nerve-wracking as the Lords Committee. I was only Minister for 10 minutes; in that time, I do not know how many various European debates and so on I did, but the House of Lords Committee was by far more rigorous, embarrassing, nerve-racking and detailed.

Q288 Kelvin Hopkins: They have permanent members.

Chris Bryant: They have permanent membership. The other thing I would say is that the job of Minister for Europe in particular is one of the few jobs where you are permanently negotiating with other countries on Britain’s behalf. The more you have your ducks in a row, and Parliament helps you to do that, the more likely you are to achieve success in European debates, which is why I always wanted to do things earlier in the process, before I was going off to meetings in Brussels or Strasbourg. I would say that the more rigorous and the more aggressive it is, probably the better—not from an ideological, partisan view but just in terms of the British interest.

Q289 Chair: We now have three other questions I am going to group together, because we have covered some of this territory while we have been engaged in this dialogue. They fall into the following categories. What is your view about the involvement of departmental Select Committees? Do you think time taken on European business on the Floor of the House is adequate? What is your view about the scrutiny of the transposition of EU directives into UK law? Could I start with Andrea? We have another list of questions to come and I know we have another three people who are coming to give evidence after you, and they are going to be asked the same questions, so can we keep fairly concise? Involvement of departmental Select Committees, time taken on European business on the Floor of the House, and transposition of EU directives into UK law: Andrea?

Andrea Leadsom: I will concentrate on the first two. The transposition is not something I have particularly focused on. In terms of the Select Committees, I do believe, as I have said from being a member of the Treasury Select Committee, that there are occasions when we are asked for an opinion and the Select Committee does not really engage with that request. What would be very important in a review of scrutiny is that Select Committees themselves have a new requirement to engage with European matters.

What I would propose is that they have a requirement to debate the work programme as it is announced once a year, and the five-year strategy targets, as a one-off, and then that they side aside time periodically, at their discretion, specifically to deal with proposals coming out of the EU as it relates to their workload. They can then respond ad hoc to requests from this Committee. It seems to me, if we are to really try to get ahead of the game, rather than just dealing with legislation as it is already there, we need to start front-ending it and getting the Select Committees to engage far more proactively than they do.

Second, in terms of time on the Floor, as I have said, I believe that this Committee should be allocated specific slots for time on the Floor of the House.

Martin Horwood: As I have made clear in my submission, departmental Select Committees should play a much larger role. Most of the motions that go to European Standing Committees are, effectively, "This Committee notes..." so it is not as if a critical policy decision is being taken. The example of Holyrood is quite interesting, where they effectively have only one kind of Committee, which deals with legislation, scrutiny and holding Ministers to account and so on. They group them into one thematic committee.

I do not think we need to be stuffy about the history of departmental Select Committees. If they could be given an obligation not just to look at the work programme but to look at Council positions and forthcoming legislation, that should be a much more formal and established part of their work. It is part of the job of Parliament to scrutinise these things. I am sorry about this, but 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. Coming back to the point that Michael made about the accountability of the permanent membership, that is a very good point. Perhaps that argues that, if it was not going to be formally given to the departmental Select Committees and you did go back to permanent Standing Committees, there should just be more of them. Perhaps they should have membership that was quite closely paralleled in the departmental Select Committees, or even formed of the members of departmental Select Committees, or something like that. That would, in effect, spread the pain too, because you would be meeting far less frequently, but you would at least be meeting on issues that you knew something about.

Q290 Nia Griffith: It is very unbalanced, because some areas would have far more meetings than others. I know what you are saying, that you could spread it out a lot, but you would probably find things like Defra would probably have a lot more.

Martin Horwood: That, however, is how it should be. If there is more going through at European level on particular issues, they should be meeting more often.

Chris Bryant: Not all departmental Committees even do annual scrutiny of their Department in the UK, let alone scrutiny of what happens in the EU. I just do not think they are structured in that way. The one thing I think we could learn from the European Parliament that I think works very effectively is the rapporteur system, where one person within a Committee is charged with producing a report. That person then becomes the point person as far as the public is concerned. The Committee still ends up having to own it, but I think that that would be more accountable and more effective.

Chair: That is very helpful, because that is the next question we were going to ask.

Chris Bryant: Could I just answer the one about questions? I think we should have a dedicated session of European questions, because just taking the hour—

Q291 Chair: Has somebody sent you the questions in advance?

Chris Bryant: Sorry. Shall I do transposition then, because nobody else has referred to transposition?

Chair: By all means. I am not so sure the other two want to get into that, but do.

Chris Bryant: They didn’t. I know everybody says that we gold-plate in the UK. I think because there is a term “gold-plate”, everybody thinks it happens a lot. I am not as convinced as others are. In fact, Britain has more infringements against it than most other countries in Europe. One of the important things when legislation is going through is that it should be absolutely clear where something has come from. If we are transposing directive X into statute Y, it should be clear to people in the House and on the face of the Bill that that is where it has come from.

Q292 Jacob Rees-Mogg: Mr Horwood, can I come back to your suggestion, because it is a very interesting one: that you send all the business from this Committee to a departmental Select Committee to sit, effectively, as a Standing Committee? Am I understanding that correctly?

Martin Horwood: I would not necessarily suggest that you are abolished. The constitutional implications, I think, need some attention.

Q293 Jacob Rees-Mogg: We would still be the sorting office to decide what had political and legal importance.

Martin Horwood: Triage, yes.

Jacob Rees-Mogg: But they would always go to a Select Committee that would have expert members. It would sit formally as a Standing Committee rather than as a Select Committee and, therefore, may be able to take a couple of members of this Committee from either side to represent this Committee, but you would extend the A, B and C idea to a much wider number of Committees, each one of which models itself on the Select Committee. That seems to me a very interesting suggestion.

Martin Horwood: Yes, something like that. You could even formalise it to the point where the members of the Select Committee perhaps sat as a Standing Committee. It does not have to be the same Chair and it could include a member of this Committee making the referral, or something like that, at the time. Something like that would be an interesting model and would get round some of the problems that we face in the current system.

Q294 Kelvin Hopkins: I wanted to come back to Martin’s point, and Mr Rees-Mogg has touched on it as well: losing this Committee would be a terrible mistake, in my view. We have the advantage of the advice of specialist clerk advisers who are very good at what they do. These papers here are a quick read on all the essential issues. We do not miss anything. Sometimes it is late because of what the Government has done—not our fault. Losing what we do in private every week would, I think, be a terrible mistake. We can refer things, and we do, to departmental Select Committees from time to time, and we get letters from Ministers and so on, but I would not want to lose what we do now.

Martin Horwood: You are assiduous at pointing out the constitutional implications. If there are organisational issues to do with the European Union, those would not sit with any other Committee, so it would be a logical thing to consider.

Q295 Chair: Martin, if I may just say, having been on this Committee for 28 years now, and having interacted with most Members of the House over the whole of that period of time, the degree of attention that is given to the questions which arise every single week on every single paper, and the direct implications on the daily lives of the people of this country, to be handed over to a Select Committee that has a whole range of other matters to deal with as well—

Martin Horwood: Sorry, I do not want my remarks to be misinterpreted. I am not arguing that you should not scrutinise anything you would like to scrutinise; I think your particular importance is in the constitutional and perhaps the legal and organisational
aspects. What I would worry about with the lack of scrutiny by departmental Select Committees is there may be aspects of energy policy or something like this that your permanent membership does not necessarily have the—

Q296 Chair: That is precisely where our questions are going to on the question of rapporteurs.

Andrea Leadsom: Can I just interject there? I do not agree with Martin’s suggestion that you could turn a departmental Select Committee somehow into a Standing Committee. What I would go back to, though, is that the Select Committees are not contributing to the debate with the processes we currently have. Absolutely, this Committee is essential and it always will be, because the Select Committees have their own agendas. What would be worth thinking about, however, is that there might be a member of this Committee who was perhaps dedicated to working with that Select Committee as, perhaps, the rapporteur. Somebody from here who knows about Treasury matters might come to the Treasury Committee on the Europe day, and we might even get an MEP—goodness me, wouldn’t that be radical?—to come along and contribute as well. That brings in some specialist focus on the European aspects of it, so that you also get the benefit of the expertise of people who have been very concentrated on Treasury matters.

Q297 Chair: Would you summarise that by the expression, for example, “mutual interaction”? Andrea Leadsom: Possibly, yes.

Q298 Chair: That is the point: where you get the benefit of the specialisation, the knowledge, the procedure and the detailed assessment of the document, but you also get the benefit of the policy implications that come from the Select Committee involvement too.

Chris Bryant: But there is nothing that quite focuses the mind so much as being the one person who has to present on something.

Q299 Chair: No. If I could just refer to two other questions, one is: do you think there should be an annual Chamber debate on the Commission work programme?

Chris Bryant: Yes.

Q300 Chair: The other is: should pre-Council debates be reintroduced?

Chris Bryant: Yes.

Martin Horwood: Yes.

Andrea Leadsom: Yes.

Chair: There we are.

Chris Bryant: I just wonder about the latter. Having, I think, in my 12 years, been to every one, and having heard your single transferable speech immediately before my single transferable speech—

Chair: You know I have a profound objection to proportional representation.

Chris Bryant: Yes, but not to the Möbius strip. 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 not the time on a Thursday afternoon that nobody ever comes to but should take one of the slots on a Tuesday or Wednesday afternoon.

Q301 Chair: One last question: with respect, can we get this clear on the question of oral questions? Do you believe that it would be a good idea to have a dedicated session for European oral questions, which used to be the case?

Andrea Leadsom: Yes, I certainly think so, and I would add to that not just European questions as distinct from Foreign Office questions, but also, when we have the Business question on a Thursday morning, there ought to be a section of that dedicated to what is going on in Europe as well.

Chris Bryant: I would have a European hour, in which you could table questions which were to any Department which might refer to Europe. It might not be best for David Lidington or whoever the Minister for Europe is to be answering on the Justice Council meeting, so other Ministers could be answering as well. All the questions would have to be about an EU focus.

Martin Horwood: I do not think that would be a good thing, for precisely the reason Chris has just said: that I am not sure who would answer that with sufficient expertise on every single policy area. My recurring theme in all this is to try to get debate not entirely away from generalist committees and sessions but into areas of specialist policy expertise.

Q302 Mr Clappison: Can I just briefly interject? Does that not run counter to everything that you have just been telling us, that you want to have policy matters in the hands of policy specialists and Committees? Why not have the Home Office Minister who has been at the Council coming along to answer questions about it?

Martin Horwood: I would have no objection to that, but that is not quite what you were saying. You were talking about standard European questions. Unless you have every Minister lined up—

Chris Bryant: What happens is it is Europe questions for an hour—we were at school together. Three days before, you get printed out what the questions are, don’t you, so you know that there is one on culture and one on justice and so on. The Government then just decides to make sure that the right Ministers are there.

Q303 Chair: Were you in the same class, at the same time?

Chris Bryant: Unfortunately, we were, and we sat next to each other. I have been trying to get away from him ever since.

Q304 Michael Connarty: The one thing we have not canvassed in these questions is something that was raised some time ago about the idea of a European Grand Committee. In the Bundestag, they invite MEPs to come to debate any specific European issue that comes up. It is an issue basis, not a generalist debate.
Does anyone find that attractive? MEPs are now disconnected almost entirely, I have to say. I have said it for the record and I will say it again that, on going to the last joint Lords/Commons and European MEP debate in Brussels, I was very disappointed that very few people turned up. They turned up for a very short time. The level of engagement was so reduced compared with what it used to be, it was quite shocking. However, I do not think that that is necessarily their fault; that may be our fault, because there seems to be nowhere where we come together to debate things and use their expertise. Would that be an attractive proposition?

Andrea Leadsom: Certainly, a number of MEPs have told me that they find it much easier to deal with the Lords than to deal with the Commons in Westminster. A big gripe for them is that they do not have Parliamentary passes, which seems a very obvious way to give better access between us. I would certainly support the idea of a joint debate because, very often, the fact that people do not even know who to talk to, who is leading on this particular piece of legislation, enhances the lack of understanding here in Westminster of what is going on.

Chair: There was a time—and it was not all that long ago—when you had dual mandate, so that you had the interaction between Westminster and what was then the European Assembly. The idea that there should be interaction does seem to make a lot of sense, but the problem remains as to who calls the shots, and that really is becoming increasingly evident from the Barroso blueprint, which says the European Parliament—and only the European Parliament—is the Parliament for the European Union. We are talking about some fundamental questions.

Q305 Michael Connarty: What I am talking about is debates taking place in this Parliament, and their expertise, understanding, knowledge and insight being used for our benefit—nothing to do with where the power lies and making the final decisions. I just think we lack that element and I am glad that Andrea seems to be attracted to what I think.

Martin Horwood: I strongly agree with Michael on that. We just have different views on where the precise nature of sovereignty lies and all this kind of thing. I certainly believe that the European Parliament is the Parliament of the European Union—that is quite straightforward—in the same way that we are the Parliament of the United Kingdom. The need for interaction, however, still stands and, certainly, if you go to the Bundestag, the space and resources attached to the European forum there—I think they even have their own building—allows for much more interaction between European MEPs and Bundestag MPs.

Chris Bryant: I used to work for the BBC and did all the BBC’s lobbying in Brussels. The great advantage of the rapporteur system and the Committee system there, where every single MEP is a member of at least a Committee, is that Committee Week itself is as valuable and important politically as the plenary weeks. For instance, the copyright directive was going through. The BBC had a very significant interest in how this was going to come across. We were having a big row with the Murdoch press about it. It was the Chair of the Committee and the rapporteur on the copyright directive who were the two most important people for me to deal with. It also happened that it meant that lots of MPs here knew who the person to deal with in Brussels was, but the people in Brussels had no idea who to deal with here in Parliament, because it is just a kind of morass of generally, vaguely interested people who might know something.

Chair: Kelvin, I think this will have to be the last question.

Q306 Kelvin Hopkins: Two very simple points: the House of Lords do not have elections. Our noble colleagues, admirable people though they are, do not have elections and do not have constituencies. They have more time and a much more relaxed way of life. On the continent of Europe, they have PR systems, where, often, they do not have single-member seats to relate to, they do not deal with constituents, and they spend all their time in Parliament. Again, they have an easier time. We have to make sure that the system is geared to the realities of being a Member of Parliament too.

Chris Bryant: That is why I would like to see Committee Week being instituted. The real politics of how you effect change in British life is as much through a membership of a Committee as it is through what you do on the Floor of the House, and I think we will eventually have to recognise that.

Chair: Thank you all very much indeed. It has been extremely helpful. The dialogue went slightly better than I thought it might because there were so many people who wanted to get involved, but thank you all very much indeed. We will move on to the next group of Members of Parliament in a minute. Thank you very much.

Examination of Witnesses

Witnesses: Mr Richard Bacon MP, former member of the European Scrutiny Committee and member of the Public Accounts Committee, Robert Broadhurst, Senior Researcher to the European Research Group, and Chris Heaton-Harris MP, member of the European Scrutiny Committee and member of the Public Accounts Committee, gave evidence.

Q307 Chair: I think all three of you listened to quite a lot of what took place in the previous session, so it may help to just start straight off with the same questions, in the same order. First of all, thank you very much for coming and also for the detailed, very full and comprehensive note that Chris Heaton-Harris and Robert Broadhurst provided. To start at the beginning, what are, in your judgment, the strengths and weaknesses of the scrutiny system in terms of the sift by this Committee of the documents according to
speaks other than the Minister and the shadow statement. You might be one of the only people who want to be there—and you make an opening they have been drafted or whipped in, they do not more than most of the other people there—because regularly, and I quite enjoy that. It is quite interesting here, I get to serve on European Committees quite As a member of this Committee, like all the others time, but the decisions we make as to what we are process so that the public can see that we are going to do scrutiny, it should be a transparent process so I have seen enough of them and do not need them, but I will take the questions one by one. Firstly, the A, B, C one and how we grade them: it is fascinating and interesting, and I know the clerks do an awful lot of work. It makes the Committee members’ work a lot easier, but I do not think it particularly adds too much to our scrutiny of things, to be quite honest. As you know, I wrote to you at the very beginning, as soon as I was appointed to this Committee, saying I think we should meet in public. If we are going to do scrutiny, it should be a transparent process so that the public can see that we are scrutinising European legislation properly.

The very excellent advice that we get from the clerks should be given in private, before we go into public session, but the decisions we make as to what we are going to refer to an inquiry or to a Minister and have a debate about him informing what we want—should be done in public. I think we have that part of it wrong, and there is no surprise then that there is less interest around about what we do, because most of it is done behind closed doors and should not be like that.

Then I guess you get a bit further down the process. As a member of this Committee, like all the others here, I get to serve on European Committees quite regularly, and I quite enjoy that. It is quite interesting to be indulged in a debate where you know slightly more than most of the other people there—because they have been drafted or whipped in, they do not want to be there—and you make an opening statement. You might be one of the only people who speaks other than the Minister and the shadow Minister, or who asks any questions, unless you have somehow managed to spark some interest in the brief opening comments or the Minister says something vaguely controversial in their interjection. I think the way that the European Committees work at the moment does not work. It is dysfunctional and I think we need to bring some specialism into that. That is maybe where you can bring in other members of Select Committees for certain subjects in certain ways.

Our process has not changed in a very long time. I know there was a debate and a vote a while back, before I got to this House, about whether this Committee should meet in public, but one of the first things we should do to improve scrutiny is meet in public.

Mr Bacon: May I start by agreeing with that last comment? I served on the European Scrutiny Committee for four years. I only came off because the timings changed and it was not possible to combine that with my membership of the other scrutiny Committee which I still sit on—the Public Accounts Committee. The reason that is always given, I know, for meeting in private—and I read the evidence that Gisela Stuart gave, and Mr Hopkins gave a good summary of the case—is that the expert advice would no longer be available. I have never fully understood that.

I do understand the receipt of expert advice because, on the Public Accounts Committee, we get expert advice from the National Audit Office every week, several times a week. We are a very busy Committee. We met on Monday and informally yesterday, and we are meeting this afternoon—I am late because I am here—and again tomorrow morning. We rely heavily on professional advice from the National Audit Office. Much of that advice, it is true, is published in the form of the 560 audit reports that the NAO does, and also the value for money studies that it does on a whole range of Government expenditure, covering pretty much every area.

It is also true, however, that the advice that the National Audit Office gives to us as a Committee about its reports is not public. They attend our Committees, our deliberative sessions and our open, public sessions, and they are available publicly to state facts and to help us, but the fact that they are expert advisers, that they are professional, that they are impartial and that they should not be involved in the political process and, indeed, are statutorily prohibited from being involved in questioning the merits of a case, has not prevented them from giving us expert advice and us drawing on it.

It is an extraordinary paradox that the EU is so important and everyone understands that—it touches so many aspects of all our lives; when one becomes a Minister, they say, there is hardly anything, depending on which Ministry you are in, where your life is not affected, not to say dominated, by this corpus of institutions—and yet there is so little enthusiasm and understanding inside this legislature. It does seem to me that it must be connected with the fact that it is all so private.

In the four years I served on this Committee, I would turn up to everything with “E” on the front of it. It was always the same old people having the same old conversation, without the involvement of others. In the most broad and general sense—and we are talking...
about this on the Public Accounts Committee—the introduction of rapporteurs with specific responsibilities for specific areas is, I think, a much broader theme that should be introduced across Parliament to make the jobs of MPs more worthwhile, more valuable, more interesting and more attractive. Do we need to do that in a more public way, including Committees like this one—your Committee, sir—meeting in public? Yes—I agree with Chris.

Q308 Chair: That is very interesting. Mr Broadhurst?

Robert Broadhurst: Thank you, Chair. I have been involved in this sort of thing one step removed by supporting MPs on this Committee for a number of years. I happened across a book by Peter Hennessy, the great constitutional expert and now Lord Hennessy, which is about the British constitution generally. I thought that it was a very apt statement that he put in a very pithy way: “The Commons and Lords Committees watching Europe try hard but many issues come to them too late and they fail to sound the tocsins in time. Their work is almost completely unknown to the public, and the press pays too little attention to them.” That was published in 1995 but, unfortunately, it is still apt.

This Committee has, as you mentioned, its sifting role, which is vital. The Commons has a comprehensive system of scrutiny, which is very important, because the EU has such wide-ranging effects on the lives of the people who send MPs here that MPs should be able to keep a watch on all of that. Of course, however, it means an enormous amount of paper and an enormous amount of documentation of very different levels of importance, so the sifting is integral at the start of the process.

It broadly does it very well in terms of the output of that process. There are question marks as to whether it could do it more publicly. There is a question as to what happens afterwards and, as Chris said, good though the reports are for reference, if anybody wanted to refer to them for more in-depth research on a particular issue, they do not provoke public debate, at least most of the time. The discrete reports on very particular areas, like the EU Bill or the Lisbon Treaty are different matters but, on the more routine EU legislation, which is still important, there does not tend to be a great deal of public attention. So there is a real issue there. There is only so much that can be debated in the House, even in European Committee. I am sure we will come on to European Committees afterwards.

There is an issue there about the Committee perhaps trying to slightly build its public profile a little bit, maybe by engaging the press slightly more in terms of the findings it has made on EU proposals coming down the track and generally trying to be a little bit more public about its manner.

Q309 Chair: Could we explore the question of the involvement of departmental Select Committees, and the idea of rapporteurs, a little bit? Chris Heaton-Harris, do you go down that route?

Chris Heaton-Harris: Yes, I do, very much so. I think it would be a very healthy innovation. I am not so sure about these French words—you have to be very careful about this, Chair. I think it was George W. Bush who said, “These French, they don’t even have a word for entrepreneur.” I really do think there is so much locked-up expertise, both in the departmental Select Committees, in the individual members within them, and in this House—the expertise that they have had before they get to this place and they then build up. There are so many important things coming down the line, which we could probably see a bit better through the Commission’s work programme and following that, that we are missing a trick by not appointing people with a role of tracking certain things in certain areas. What would be wrong with trying to have a pilot where you bring the odd member of departmental Select Committees into this Committee; for example, when we are dealing with the justice and Home Affairs remit, someone who is on the Home Affairs Select Committee? I know we have Mr Clappison here, who helps, but let’s bring some more expertise in to these things.

Mr Bacon: The very act of people who are in one silo—and, inevitably, you get into a silo, whichever Committee you are on—meeting people from another Committee is, in itself, energising. Recently, for the Draft Local Audit Bill, the pre-legislative scrutiny was done by a Committee consisting of members of the Communities and Local Government Select Committee and the PAC. This was to consider measures including, among other things, the abolition of the Audit Commission. It was a very interesting experience, I think, for all of us to work with members of a different Committee, and there was a new level of energy simply because we were there doing something slightly different with people we did not work with every week. In and of itself, it is a good thing and it gets us out of our silos.

I also think, sharing Mr Heaton-Harris’s concerns about the Frenchness of it, that the rapporteur principle has huge potential. We talk about Parliament not being important enough, not being attractive enough, not getting enough good people and those people, when they get here, even if they have had a tremendous contribution they are not able to be used and are just considered lobby fodder. I think we are seeing a process that started in the late 70s and has already come much further than you might think. I remember, as an undergraduate, Ken Clarke coming to the London School of Economics in the mid 1980s. He was a complete maverick on Select Committees—he thought they were a complete waste of time and a great place to put people to keep them quiet. I have heard him say recently that he has changed his mind: that they have started to make the weather a bit more. We are not there yet, but I suspect, if we look back on it on a 50 or 60-year view, rather than a 30-year view, we will find there has been a significant shift towards more parliamentary power and more Executive accountability and transparency, and that the rapporteur principle could form a very important part of that by giving Members of Parliament a more valuable role. I think it was a famous psychologist who said, “If you want people to do a good job, give
them a good job to do", and this should form a very important part of that.

Q310 Chair: Could I just move on to another question, which is the time taken on European business on the Floor of the House, but relating to that to the question of whether or not you think that this Committee should be able to refer documents directly for debate on the Floor of the House rather than going through the process of the whips and the Leader of the House and all that?

Mr Bacon: My personal view is that anything that strengthens Parliament—by which I mean individual Members of Parliament assembled in Committees rather than the establishment and the system, be it the whips or the Leader of the House—is a good thing. It would be a power that would need to be exercised judiciously, and I am sure it would be exercised judiciously, but I think giving that direct power to a Committee like this one would be a good thing.

Chris Heaton-Harris: I certainly think we should have set times where we are given Floor space. Like Mr Bacon, I believe we should use those times very wisely. You just have to look at some of the debates we have got on to the Floor of the House recently. Some have not been so exciting but the one on the multiannual financial framework turned into a very big deal, which did direct Government down a certain route that it probably wanted to go down anyway, and added huge value and saved this country a huge amount of money. I think there is an amazing amount that could be done on the Floor of the House if we were given set times and we could be very clever with the way we used it.

Q311 Michael Connarty: Debates on the Floor of the House: I have to say that, apart from the last debate we had, I felt they had become repetitive and not necessarily focused on issues. The speeches made were about the principle of "in the EU or out of the EU", bad thing, good thing", again and again. It did not matter what the purpose of calling the debate was: most of the speeches and their content were generalised and did not show a lot of deep study of the issue before us, unless it was a debate on something like the eurozone or multiannual framework. I did not feel that the level of light was as strong as the level of heat generated in those debates. The last debate seemed to change that, and I do not know if that is because the Fresh Start initiative has taken place and people are beginning to think about the issues that might come, should you take a decision to genuinely leave the European Union, in much the same way as, in Scotland, as we have got past the process and got the question, people are now talking about the issues, and suddenly there is more interest in what really happens if you leave the EU in a Scottish independence situation and what happens to a service or defence contracting. People look into the issues and the debate is much more focused and much more enlightening. How do you avoid slipping back into a situation where the point of getting to a debate in Europe is to rehearse your ideas about being in the EU? How do you discipline the Chamber to be more productive instead of generalist, which I think was a phrased used quite a lot?

Mr Bacon: Plainly, part of that does rest with the Chair. It partly rests with the decisions of this Committee as to what decisions are put forward, but I might put the question back to you: how do you discipline COSAC, the body of committees like this one across Europe, when it meets together to talk about the things that it is supposed to talk about; namely, how to improve the scrutiny by national Parliaments—plural—of the way in which things are done, rather than rehearsing the old issues, which is, when I used to go to COSAC, what happened. There was a good slap-up dinner and it was interesting, but, quite frankly, I was so losing the will to live at one of them that I went into the library room of the Italian Senate, settled into a comfortable chair, and read Isaiah Berlin, because I thought it was more productive than listening to these same old rehearsed speeches again and again.

I do not think there is a simple answer. It does have, surely, to do with what topics you put before people to discuss, however, and a lot of the responsibility for that does rest with the Chair. I do not think one should just take it as read that the Chair will necessarily get that right. It might be the sensible thing for this Committee to sit down with the Speaker's Office and talk about these issues.

Q312 Henry Smith: I am going to assume, but correct me if this is an incorrect assumption, that you would agree there should be a debate before the work programme every year and also a quarterly debate ahead of EU Councils. I also assume—and again correct me if this assumption is wrong—that you would think that a dedicated European question time on the Floor of the House was a good idea too. I do not know whether you heard, towards the end, when Andrea, Martin and Chris were giving evidence, when Andrea, Martin and Chris were giving evidence, I do not know if there was some suggestion of some sort of joint, possibly Westminster Hall debate including MEPs. What is your take particularly on that? Please, as I say, do correct me if the earlier assumptions are not what you feel.

Chris Heaton-Harris: I found myself sitting in the corner over there in horror, because I was agreeing with what Mr Bryant was saying, and I will go away and take some powders after this meeting to make sure that never happens again. There are set pieces in both our political calendar and the Commission's political calendar—and the work programme is certainly one of those—where we should have a decent debate. We were whittled down to only having four or five minutes in the course of the last debate on the work programme because it had been squeezed in to the last three hours and, with other urgent questions and statements, got whittled down a huge amount.

Firstly, I would like to agree with Andrea Leadsom completely that MEPs should have passes to roam the House: I have to say that, apart from the last debate, I know there was an issue with the BNP, which is what caused the issue of no passes for MEPs now. That could easily be
overcome if you said that, if you had a party elected to this place and a party elected to the European Parliament, there should be a pass available for those MEPs. I very much liked this idea of having the quarterly Council debates in Westminster Hall with MEPs present and able to contribute.

Mr Bacon: I agree with the MEP passes. I had not appreciated the BNP point, but I think that is an elegant solution. I used to share a corridor when I was first elected with some Sinn Féin MPs, and I never saw one, but one of my researchers looked in complete shock one day when he said, “I have just walked past Gerry Adams”. They did hang around this place occasionally and they had passes, and this is called democracy. When you get 71% of the vote in your constituency, you are going to get returned and we had better get used to it. I think it is extraordinary that we have so little dialogue and interaction with MEPs. I have very rarely managed to go and do it, but I know a number of MEPs—not nearly as many as Chris—and I have often planned to go over there, just to see them, really, because we have things we want to discuss in common; in some cases, we are old mates. It is, as much as it should be, a much more fluid dialogue and interaction. Gosh, there might even be more understanding as a result. On that, then, yes.

On the question of things like debates on the Commission’s work programme, yes, of course, so long as it is timely enough that this Parliament feels it might influence something. There is nothing worse than the triumph of form over substance. If I am honest, one of the things that I used to sometimes feel about what was going on on this Committee when I served on it, going through this enormous pile of briefs, which I assume you still have—the sift, where it is done as A briefs, B briefs and C briefs—is that it did feel like a process that was there for its own sake, and I was not quite clear what it was influencing on the outside. I used to use it as a source of information, but when somebody like Digby Jones, who was at the CB1, once came along to the Committee—I was not present—I am not sure I was any longer a member of the Committee—and accused this Parliament of being asleep on the job in relation to European legislation, it turned out he did not even know what a scrutiny reserve was. The reason why that could be the case was because it is all done hugger-mugger and in private.

Q313 Chair: There is another point, however. I am a former legal adviser to the CB1 in private practice—I was not in the House—and I can absolutely assure you, because I was in that debate, that David Heathcoat-Ambury and I both challenged Digby Jones. How often have the CB1 ever sought the opinion of the Committee on any matter whatsoever? The answer is “none” and, what is more, never since.

Chris Heaton-Harris: Chair, there is a reason for that: because the CB1 have an active government/public affairs lot in Brussels, and they are doing what we should be doing, which is connecting with that system and that debate a lot earlier.

Chair: There is that point but there is also the fact that, in the course, for example, of the unified patent law, and many others, as we go through the process, with the benefit of our legal advisers and on an interactive basis, we put forward proposals to the Government on the basis of what they put to us. There is much more interactivity in the process of changing the content of a directive or regulation than people appreciate, because of the questions that we are asking of Government Ministers and, thereby, working groups. There is, then, much more interactivity, perhaps, than people appreciate, but I certainly understand the point that is being made regarding the necessity to get more engaged in what is going on in the European Parliament.

Kelvin Hopkins: First of all, on COSAC, I agree with Richard. My experience of COSAC is that the only exciting bits are when the British House of Commons representatives speak, and they speak in a completely different way to all the other delegates. At the last meeting I went to, I asked a continental delegate why there were no party affiliations against the names in the list of attendees. He said, “Party affiliations make no difference. They are all, essentially, the same.” We have a different view. That is interesting. They have many more problems than we have, I think, in these matters. I am concerned about this idea of rapporteurs. The fact is that our Parliament is sharply divided between political parties, and parties are very sharply divided over attitudes to the European Union. When a rapporteur gets up, people say “He is a euro-fanatic”, or “He is a crypto-fascist”, or whatever—people make these comments. People have different attitudes, and “rapporteur”, in a much more consensual world like the European Parliament, is different.

Mr Bacon: I take your point completely, and the reason why I am enthusiastic about it, if I am honest, is less because of it being suggested here than because of the discussions we have been having on our own Committee—the Public Accounts Committee—being not a policy committee, where we do not look at merits, but where we look at implementation, effectiveness, efficiency and economy, and where we think we might be able to usefully use the rapporteur system to spread out the enormously heavy workload. Currently, we are just running hot and we think we could probably do a better job by importing some of those ideas. I take your point, however, that there will be cases where it will be quite difficult to make it work, but that is not a reason for not choosing cases where you think it probably will work and experimenting with it.

Chair: Could I say something on the two pre-eminent Scrutiny Committees? There is also, of course, the Statutory Instruments Committee, but, in practical terms of the impact on the big scale of the landscape of what goes on in this place, Public Accounts and European Scrutiny are, in fact, the only two real Scrutiny Committees. Your evidence, if I may say, and your knowledge of both Committees have been extremely helpful, certainly as far as I am concerned this afternoon.
Q314 Kelvin Hopkins: On that point, Chair, may I just add that the National Audit Office is one remove from Parliament? It is an outside body—

Mr Bacon: Let me correct you. One of the reasons why I would have loved to have got them into 9 Millbank instead of Ofgem is because the boss of the National Audit Office, the Comptroller and Auditor General, is an officer of the House of Commons. Its employees are not Civil Servants, and he is not a Civil Servant; he is an officer of this House.

Q315 Kelvin Hopkins: He is, though, able to be freer in his criticism of Government, in a way, no doubt because it is historic. We do not have that. If we had a kind of Institute of European Affairs or a National European Office, or something with a high-status person like the Comptroller and Auditor General—that kind of approach—it would be easier for us to meet in public, because reports would be coming from this body to us, we would nod them through, and it would be much more acceptable. Our clerk advisers and the staff we have here are very good, but they do not have that kind of status.

Mr Bacon: No, they do not have that kind of status and, when Sir John Bourn, the previous C&AG, used to give evidence to our Committee, he would always turn up and speak if asked. They were ex cathedra. It was almost like the Pope had issued a bull: there was no contradicting him. The present C&AG is much more engaged and rolls up his sleeves. He is very much a servant of the House but he will mix it with Permanent Secretaries, though not about policy. What I am saying is that, yes, as a Committee, you have experts and they write these briefs for you, which I have seen and which I think are very good. There is no reason why that advice needs to be in the generality public—quite the contrary—but there is no reason why the sift cannot take place in public, so that those who have an outside interest have the opportunity to know what it is you are sifting and have the opportunity to have their own input and to contact you through the clerks in a timely manner.

Q316 Chair: Could I just bring in something which has not had very much attention so far in these sessions: the Explanatory Memoranda? As a matter of fact, that is the statement by the Government of its view about what is contained in sometimes a labyrinth of complex legal matters. There is no real excuse for anybody in this House who has the knowledge that the Explanatory Memorandum is there, not to know what the content of the subject matter is and also what the Government’s view of it is. I think perhaps more encouragement for people to know what the Explanatory Memoranda has been saying would be more helpful all round.

Mr Bacon: I am sure that is right. It is just that we are all faced with such a tidal wave of information on lots of different things that it is a question of choosing. The other thing is, I believe that this Committee waits until the Explanatory Memorandum from the Government has arrived before it takes action. It seems to me there is no good reason why, if something appears to be coming out of Brussels or, through your intelligence network, you know that something is coming out of the Brussels, or the Commission has opined that it is going to do something, and if it is interesting enough, this Committee, as a Parliamentary Committee, should have to sit and wait until the Government has said what it thinks. There is every reason why this Committee might want to investigate that matter for its own purposes and, perhaps, as a result, influence what the Government thinks.

Q317 Chair: Gentlemen, both of you are on the Public Accounts Committee and it has come to my attention that the Public Accounts Committee is anxious to have your attendance. Michael Connarty wants to ask one last question but we will release you almost immediately after this question.

Q318 Michael Connarty: The impression I have about Select Committees is that, if they have more knowledge, they have more effect. The perception I have is that we have less effect on European matters because we lack knowledge, and the generality of the Parliament lacks knowledge to make effective contributions in most European debates, except in a very general way. A question from me: one thing you would each suggest that would increase the knowledge of Members of Parliament. I would give them study time and tell them they have to sit in the library to learn something, like you used to do at school. That might help, but that is not likely to happen. How do we make Members realise that knowledge is power, and opinion is just hot air?

Mr Bacon: Goodness, it is a long answer. If you read Bent Flyvbjerg’s book, Rationality in Power, he will tell you that power is knowledge. I can tell you that I have read it several times and it takes quite a lot of unwrapping. The short answer, is that, yes, people do have to take the decision themselves to specialise. In the Public Accounts Committee, we specialise but we specialise in public expenditure and value for money; thus, we look at agriculture, defence, transport, health, the teaching of primary-school mathematics and nuclear submarines. We cannot be specialists in all of those but we can be specialists in, “Did you have anybody in charge?”

It is, to me, extraordinary that the Department for Transport managed on west coast main line not to have a senior responsible owner in place at all for a period of three months and, even when it did, they were changing every few months, when anybody who knew anything, I would think, would know that one of the main failings in the Bowman radio military communications system in 2006, when the National Audit Office did a report on it, was—guess what—that they did not have continuity of management and they did not have a senior responsible owner. However, you would not necessarily know that unless you were specialising in something that is a step removed from “defence”, but rather in the implementation and the saymaking of these issues. I think the same is true for every area, and it is certainly true in the US Congress that members of the Congress generally build up a much greater degree of expertise and have a much greater degree of power as a result. I would agree with you: it was James
Madison who said, “Knowledge will forever govern ignorance.”

Once again, it does pain me, like it does Mr Heaton-Harris, to have to agree with Mr Bryant, and I too will be finding some medicament that I can take afterwards. What he said at the end of his evidence, I thought, was profoundly important: that modern legislatures have to wake up to the fact that it is through Committees that we work best. The European Parliament finds that true; the US Congress finds that true; we have found it increasingly true over the last 30 years, and my plan and my hope—and I am doing everything I can to make it happen—is that it shall become truer here.

Q319 Chair: In that case, I think we will perhaps finish on that note, unless Mr Heaton-Harris has anything.

Chris Heaton-Harris: I just want to say that I would agree with what Mr Bacon says entirely, but you get a lot of knowledge transfer by meeting people. If we are, essentially, banning Members of the European Parliament from walking around this place, we are letting our country down because we are not using the expertise they have. There are a number here today because they happen to be on one of those week sessions where they can be here. Having to sign in a democratically elected Member of the European Parliament is a bit embarrassing, at the end of the day. If we can sort one thing out, so they can come here and they can sit in the back of these sorts of public sessions and maybe tap us on the shoulder as we go outside and say, “You should have said this”, or “You should have said that”, it would be a darn sight better than what we have got now.

Q320 Chair: On that note, perhaps we could finish the session, Robert?

Robert Broadhurst: I was just going to say something that feeds into one of the live issues before your inquiry, which is the European Committees. It would impose a bit of a discipline, I suppose, on Members if they were a permanent member of a European Committee and they would have that continuity and be able to develop expertise in whatever area they were on.

Chair: Thank you not only for this session but also for the detailed document that you provided us with. Thank you very much indeed.
Wednesday 13 March 2013

Witnesses: David Keighley, Newswatch, gave evidence.

Q321 Chair: Good afternoon, Mr Keighley. Thank you very much for coming along.

We can go straight into the first question. Your memorandum criticises the BBC for being, “biased in its coverage of EU affairs.” What is your view of the BBC’s coverage of the European scrutiny process, in terms of debates on the Floor of the House, proceedings in European Committees, the work of Departmental Select Committees and the reports and evidence sessions of this Committee?

David Keighley: That is a big question. Just to preface how I have arrived at that rather big conclusion, the work we do has been over many years now and is very systematic. We have monitored more than 6,000 hours of BBC output, the bulk of which has been the Today programme. We have also covered European elections and general elections when we have done a much broader sweep of programming.

It is very systematic work. We do not base it on simple value judgments. We transcribe everything. We record everything. I have been through every one of more than 7,000 transcripts over the years, looking at what is said there. We realise that measuring bias is a very complicated process, of which there is no absolute answer; one person’s bias is another person’s balance.

What we have tried to do is take into account all these different factors and arrive at our conclusions.

I will start with the European Scrutiny Committee. I believe you have talked about Lord Wilson’s report from seven years ago: he pointed very much to one of the major areas of problem in output, which has been bias by omission. What he meant by bias by omission is that covering European affairs is quite difficult because making them interesting in the eyes of the general public, as Ric Bailey said when he gave evidence, can be quite challenging.

Lord Wilson was very clear also that it was the job of the BBC, as a public service broadcaster, to take that on board and then look at European affairs and make them interesting to the public. It was their specific remit to do that. I have looked at what has been covered by the Today programme over the past seven years, specifically about the European Scrutiny Committee. Our monitoring is not the entire output of the Today programme but it has been approximately half of it. There is therefore a slight assumption that covering half allows you to make, to an extent, a generalisation about the other half; I would put that caveat in. Of the half that we have covered, there have been only about 10 mentions of the European Scrutiny Committee on the Today programme.

Q322 Stephen Phillips: In how many years?

David Keighley: Since 2005, so in eight years.

Chair: We, of course, produce vast numbers of reports and there are also our recommendations for the European Standing Committee and debates on the Floor of the House.

David Keighley: For example, when you recommended, as I understand it, that there should be a debate on the budget last autumn, the only mention on the Today programme was that you had sent the subject for debate— and we were monitoring between that period of September and December. My argument would be that given the importance of this debate and given all that we know about the complexity of the European budget—which you do not need me to tell you about—that was a peg to discuss not just why the European Scrutiny Committee had recommended this but the deeper issues behind that. In fact, the European budget was, in our latest survey, one of the higher areas of coverage in terms of volume of coverage devoted to European affairs in the last survey period.

The point I would make is that within that coverage, although there was opinion about whether the budget should be higher or lower or whether there was a split in the Conservative party and so on, there was no real effort by the Today programme to explain what was behind the budget, why it had arrived at that particular point and why the European Scrutiny Committee, for example, felt so passionately about this subject. I would characterise that as, if you like, the “bias by omission” argument that, actually, these things are happening.

I fully recognise that the Today programme should not be wall-to-wall European affairs and it has to have a balance of subjects, but my argument is that it has not properly taken into account what Wilson and others have said about the need for more explanation, more interpretation and aiming for the audience to have a wider understanding of what European affairs are about.

Q323 Chair: In terms of information within the framework of the BBC Charter, are you saying that the coverage of not only our own process but also the debates that take place and the proceedings in Committee and in the Departmental Select Committees, in your judgment is, by omission, failing to live up to what is required under the Charter? Is that what you are saying?

David Keighley: In a nutshell, yes. Can I give you another example of a different area of coverage where
that would be covered by the obligations within the Charter? I have picked out the statistics from our database and what we have looked at are what we call general EU legislation topics. The only way I can explain that is, for example, "The latest project from the director of the award-winning Abba musical Mamma Mia and the Oscar-winning The Iron Lady is an all-female version of Shakespeare’s Julius Caesar." There are some mentions of the EU legislation; the population of wolves in Sweden has recovered and the debate is raging about whether there needs to be a cull; there is something about the ash disease and what was being done to that; there was also something about artificial hips legislation and perfume makers. There is that general melange of legislation and directives that you cannot sum up in one word.

We have looked at how much of that there has been since March 2010 and that covers six of our surveys. The total amount of our feature airtime and the monitoring we have done there is 749 hours. That is the total on the Today programme available for all feature material. In that period, they covered 75 hours of general EU affairs, but they covered just 1 hour 36 minutes of the general legislation. That means that the percentage of the Today airtime that was actually devoted to what we call general EU affairs was 0.21%.

Q 324 Henry Smith: Mr Keighley, welcome and thank you for your evidence today. In your memorandum, you say that Newswatch also monitors other broadcasters via various different channels. What is your assessment and view of what those other broadcasters’ attitudes are towards the Commons European Scrutiny Committee and their general reporting?

David Keighley: I should say that the work that we have done on other broadcasters has been relatively limited, so I would not put the same weight on that.

Q 325 Henry Smith: I take that fully on board, but nevertheless, do you notice a difference between their attitude and the BBC’s or is it similar?

David Keighley: I do not think there is a major difference. Most broadcasters think that coverage of EU affairs is quite difficult and it is difficult to bring them alive. My argument has always been to the BBC in response to that, “You are the public service broadcaster, you are the one that gets the licence fee money and there is a special responsibility on you there.” It is often difficult persuading broadcasters that their job is to bring EU affairs alive and I would not say that the BBC is particularly worse or better than others in that respect. That is, again, what Lord Wilson drew attention to in saying that the BBC has that special responsibility.

Q 326 Chair: To put it the other way round, would you say that, where most people refer to these questions as European affairs, in fact they are British affairs, because the legislation is passed in the United Kingdom Parliament and it is part of the function of Parliament to evaluate through the Scrutiny Committee and, subsequently, through Government, to implement European obligations imposed on the United Kingdom? Rather than looking at it as an exclusively EU question, the real question is also the extent to which the United Kingdom citizens are affected in their daily lives by the impact of the EU in the legislative proposals.

David Keighley: I agree. That is one of the problems. There is a mindset that there is Europe and that Britain is separate from that. Lord Wilson again drew attention to the obligation of broadcasters—especially the BBC— which is to make clear what the impact of the various measures is on the average person in Britain. It is getting inside that and it is about talking to British people about what they think about these affairs that are going on on a very complicated basis.

From the evidence we have, that is another part of the problem: the vast majority of the coverage is through the eyes of politicians; it is very seldom that they go to ordinary people to talk about these issues. That raises its own difficulties, of course: how do you identify who to go to and so on? A gain, I would argue that that is the job of the broadcaster. Their job is to realise that there is a degree of complexity and that it is about how we live our lives. That has always been the starting point I have come from; we are talking about affairs here that our integral to UK life, however you look at them, and the importance is in understanding the impact.

Q 327 Henry Smith: Have you detected a difference in terms of the intensity of reporting, regarding different media? For example—obviously, you have mentioned the Today programme on radio—there is television and the web as well. Is it a fairly consistent style of coverage across all those different media?

David Keighley: It is a fairly consistent style, yes.

Q 328 Kelvin Hopkins: First of all, can I say that I think your paper is excellent and a revelation to me as a Labour withdrawing. You kindly made reference to me. I just wanted to note the figure that 0.06% of the total number of speeches on the EU in seven years were made by Labour withdrawals; that is one in 1,400, approximately. Even in the House of Commons, at least one in 10 speeches are made by Labour withdrawals, so the imbalance is very clear. That was just a comment.

When witnesses from the BBC gave evidence to the Committee—I know you saw that—they suggested that the complexity of European issues can make it difficult to report on them in a way that the public can understand. As a former BBC journalist, do you share this view? What are the potential challenges in reporting developments in the European Union and how can they be overcome?

David Keighley: As a former BBC journalist and somebody who did cover European stories many years ago now, it is difficult. There is the feeling that because it is Brussels and because it is “over there”, it is not necessarily relevant. It is a lot of committee work. The words “legislation” and “directive” are not something that turns people on.

The point is that I became a journalist and I think most journalists become journalists because they do want to help interpret the world for other people. It is
the challenge of journalism to do that; that is what
Wilson said very clearly. We have compiled some
figures on this, and this is not a reflection on their
entire output, but quite often on Today you get this
feeling that, “It’s boring. It’s the EU”—that is often
said as aides in the introduction to the item. That is
the sort of thing that the BBC should be continually
fighting against in how they cover things.
I am not trying to say that all the BBC does is bad as
I think they do some tremendous stuff at times, but I
get the impression there is this default position, if you
like, that it is difficult and it is boring and it is “over
there” and it is not really about the UK. That is the
problem.

Q329 Kelvin Hopkins: I get the very strong feeling
from that argument that there is an attempt to say, “It
is far too complicated for ordinary people. It will go
above their heads, so let’s not talk about it. We’ll just
carry on supporting the EU.” That is the flavour of it,
if I may say. I write and speak a lot about the EU to
ordinary audiences and my local newspaper. Time and
again, people come back to me having understood
because I write clearly about what the key issues are
and people do understand. It is not really very
complex if you put it in the right way and this is what
journalists should do.
David Keighley: Yes, I agree.

Q330 Chair: I would like to just follow that by
asking the simple question about whether or not
everybody is not really guilty of trying to make
complexity where it is not as complex as it really
seems to be.
It is one thing, for example, to take a particular quote
from Mr Brokenshire, which was the one that we were
given in relation to the session where we had the BBC
witnesses. It is not just the Today programme: it is the
whole output of the BBC generally, dealing with
things like housing benefits. If you were to go through
the non-EU British statute book and all the debates
that take place and then ask if anything that relates to
the European Union, in terms of the legislative
proposals, is any more complicated than the material
that you have to deal with in relation to questions like
medical matters, or any part of the legislative
domestic statute book, you could ask what is the real
difference.
After all, surely it all falls into the same category; it
is just that one has the label “EU” attached to it,
imposing on the daily lives of the British people, and
the other is just part of the normal domestic
legislation. I am interested to know whether you think
that there is a real difference, although you yourself
are saying that it is complicated. Is it really all that
complicated by comparison with a lot of the other
things that crop up in the field of domestic legislation,
or not?
David Keighley: No, it is not. It is not immediately
at my fingertips but Wilson has a very good quote in his
report about the job of a journalist being to make the
complicated interesting. It is to distil reality; that is the
challenge of being a journalist. No, I agree with you.
Chair: There is banking legislation and financial
supervision: it is going on all the time in all the news
and current affairs.
Q331 Stephen Phillips: Given the answer to that
question, there is effectively no difference between
reporting legislative proposals from the EU and
legislative proposals that are before Parliament
generally from the Government. Do you want to
speculate on what the reasons are as to why the BBC
consistently fails to report on the work of this
Committee and the European business of the House?
Is it overt bias? Is it a general feeling that this
Committee does not matter? What is the reason for it?
David Keighley: Since I have started this work, I have
tried to get inside the BBC mindset on this. I have
spoken to many BBC people over the years. I have
many friends who are BBC people. I do not think
there is anywhere in the BBC where you can say there
is overt, deliberate bias. I do not think that is the way
it operates. This is purely my opinion and it is not
evidence-based, it is my gut feeling as a result of
talking to these people: the difficulty is that Europe is
in that silo of being difficult.
Stephen Phillips: You have just told the
Committee—and we would probably all agree with
you—that it is no more difficult than any other of the
complex issues.
David Keighley: I agree, but it is in that silo, for
whatever reason.
Q332 Stephen Phillips: So, there is an institutional
bias by omission as soon as the word “Europe” is
involved. Would that be a fair way to put it?
David Keighley: I think so, yes. There is also among
most journalists.
Q333 Chair: Do you think that there is any
possibility that this is derived from the nature of the
research that takes place within the bowels of the
BBC, in terms of the attitudes of the people who are
asked to go through the output for news and current
affairs and whose job it is to do the research— not just
on the Today programme but on anything else? Do
you think that the relevance of the proposals in the
Wilson Committee report and also the question of the
College of Journalism is an area where some further
analysis needs to be done in order to establish why it
is that you have this silo attitude when actually there
should not be one at all?
David Keighley: I am not clear what the BBC does in
terms of self-monitoring. As far as I am aware, it does
not publish anything on this.
Q334 Chair: Do you think they should?
David Keighley: I was coming to that. What I do
know is that in the wake of the Wilson report and the
aftermath of the Andrew Gilligan changes over the
Iraq War problems, what they did appoint is one
person to look at output on a “dipstick basis”. I have
met him and spoken to him about his work, but I
cannot say exactly what he does. However, this is the
impression that I got. He is called Malcolm Balen and
what happens is that the different editors who, as you
know, rightly have their own autonomy, every so often
In association with the Editorial Board of Management decide that they are going to look at a particular programme. Malcolm Balen does that himself; he has got some support. He does it on a revolving, dipstick basis. That is one way of conducting research, but I think it is a very limited way of doing so. Everything that we have done—and everything that the BBC has responded to us about what we have done—shows that the BBC does not really know exactly what is going on with its own output because it does not monitor enough. I am not suggesting there should be banks of people monitoring, but it is absolutely amazing that they just have this one major figure in this equation. Of course, I am not suggesting that individual editors are not able to decide, but the problem that our research has shown is that you are on a moving ship, like the Today programme, which is three hours a day, you do not often have a full view of what your own output is.

We do not arrive at our judgments on the day—although sometimes you hear programmes that you think especially raise issues—but it is only when you sit down and look over every single transcript on the EU line-by-line and look at every single issue that has been raised and how it has been raised, that you do get a picture. I do not think the BBC is doing that. All their responses to what we have done are based on that; they attack us in different ways and they will tell us, sometimes, that we are looking at the wrong time. At other times, they will tell us that we are looking at the wrong programmes. They will tell us at other times that we have not really understood that monitoring is not about counting numbers but about knowing what the texture of arguments is. Our research takes all of that into account. All their response indicates to us is that they do not really know themselves what their position is.

Q335 Kelvin Hopkins: You have portrayed the BBC—and I think there is a mindset that there are middle-class people who have got O-level French and who drink French wine and therefore Europe is a good thing. It is about making that distinction that Europe is a subcontinent of wonderful countries and peoples, whereas the European Union is a political construct. We have to make that distinction. There are those sorts of people and they think, “Everybody’s in favour of Europe, aren’t they?” That is the attitude. When someone deliberately has Marine Le Pen coming on from Paris to put the Eurosceptic view back at Nigel Farage, they are taking the mickey. That is a deliberate attempt to damn the critical case by including a fascist Farage, they are taking the mickey. That is a deliberate bias and accepted that journalists are trying to be impartial and independent. Do you think it is the case, though, that in the attitude they are forming or have formed, or the assumptions that they bring with them when they are dealing with the issues, that their attitudes actually subconsciously come from somewhere else—from what they are exposed to?

David Keighley: That is a very interesting question. I looked—and have looked over the years—very carefully this morning, as part of preparation for appearing here, at the College of Journalism website. When you look at how that is framed, their attitude towards Europe is very difficult to characterise, but it is almost from the corporate mindset; it is from the idea that, yes, Europe is a good thing. It is not as critical as you would expect it to be. It applies often to their coverage, they are not really getting to the nitty-gritty of why there is an issue around this particular area of Europe. They are not really engaging with it. It is easier to accept that Europe is—

Q337 Mr Clappison: I often feel when I am listening to those sorts of programmes, where somebody is challenged right from the off, that the effect on public opinion comes from the questions, rather than from the statements and the answers that are given by the person being interviewed. Can I ask you about what you were saying about deliberate bias? You have cleared the BBC of deliberate bias and accepted that journalists are trying to be impartial and independent. Do you think it is the case, though, that in the attitude they are forming or have formed, or the assumptions that they bring with them when they are dealing with the issues, that their attitudes actually subconsciously come from somewhere else—from what they are exposed to?

David Keighley: That has been my point all along. The fact is that opinion poll after opinion poll shows that at least 50% of the population wants some change in the relationship with the EU and you often get more than that calling for actual withdrawal. It is that sort of opinion that is not being brought into the frame.

Q338 Mr Clappison: Do you think the BBC ever sit down and think to challenge where their assumptions are coming from on this issue?
David Keighley: I do not know. I wish I knew. I wish they would and I wish they would debate this more. The need is for greater transparency in how they arrive at decisions and that is what is lacking in the equation. That has been the frustration of this process—we have done this work and they have not really engaged with it, even though this is tangible evidence.

Q339 Mrs Riordan: I will follow on from previous questions and from a quote from Mary Hockaday about the lack of understanding among audiences—we have spoken about that today—and there is a lot. Mary said, and I paraphrase, it is their, “responsibility to try to help people understand politics at whatever level.” To what extent should the BBC, as a public sector broadcaster, see its role as to educate and inform the public? You spoke about the reply to you and what they said about you not watching at the right time, or not watching the right programmes. If you are not, how are the public out there supposed to grasp an understanding of Europe?

David Keighley: I am not really quite sure how to answer your question, because it is quite general. The difficulty that I think is encountered is that somehow they do not get to grips with trying to think about—it comes back to the impact point—what the impact is on the average person.

The BBC has an absolute duty to educate, inform and entertain; that is drilled into you the minute you join the BBC. Part of that mission is to understand that the complicated things that affect our lives need to be properly explained to people—not in a patronising way and not in an oversimplified way. Different people out there have got different levels of understanding so you need to create a package of understanding. The website can do quite a lot in that respect.

The Today programme is pitched in one particular area. Within that area you are aiming at what is considered a reasonably educated audience, but within that you should be looking to, I would argue, bring into play the more complicated things about the EU as well and make them accessible to people.

Q340 Mrs Riordan: When should the programmes go out, and what role should the Commons play? Quite often we get education programmes—I watched one on Monday night and it was fascinating, but it was on at half past eleven at night, which is no good for people who are going to work at six o’clock in the morning. The whole package has got to be looked at, not just what they are broadcasting.

David Keighley: One of the transcripts I looked at as part of my preparation for here was an explanation that went out in 2009—not on Today, I think, but on Yesterday in Parliament or the Westminster Hour. It was an excellent explanation of EU legislation and there were some very good contributions in it; but it went out at half past eleven at night. My point would be that you cannot put an hour like that in the middle of the Today programme, but that should rub off on to the Today programme structure. Part of what Today is doing should be an understanding that within that framework of European affairs they should be continually trying to educate people and inform them.

Quite often with journalists, it is the “adrenaline junkie syndrome” where the moment takes over and you want to air as quickly as possible the stories you want to get to air. You want the programme to be as exciting as possible. However, the job is also to step back and say, “Hang on. Are we actually covering these things in the right way? Are we actually bringing enough interpretation into this? Are we allowing the right people to come on the programme?”

Q341 Chair: Have you formed a view about what we produce in our reports and on our website? Do you have a view about the content of what it is we produce? There were 90 reports recently. We are recommending matters, continuously, for debate. There are also questions of the inquiries that we have held on various issues, such as sovereignty in relation to the European Parliament. There is the question of the Referendum Bill that went through, and so on. Have you had a chance, yourself, to look at the material in question? It is flowing out of this Committee like a tsunami. I just wondered if you have had a chance to look at it and form a judgment about the content, because it is important for us to get a judgment from others as to what they think we are producing.

David Keighley: I have looked at the site. To have an overview at this stage would be presumptuous. I would be very happy to have a good look and write to you a separate note about that, if that would be helpful—rather than me giving a top-of-the-head—

Q342 Stephen Phillips: As we look at it, what we produce is primarily for Parliamentarians. The question is whether we can produce something else or something in a different format that would make it easier both for broadcasters and the print media to more properly engage with the work of this Committee and thereby to educate and inform—if not to entertain— their viewers, listeners and readers. Now, it may be that you cannot answer that today, but certainly for my own part, in terms of your output—which is very significant in terms of both content and volume—it would be useful for us to have constructive criticism as to how that could be made more accessible, both to the public and to the media generally.

David Keighley: I would be very happy to provide that.

Q343 Chair: You might find it worth considering the question of the Explanatory Memoranda that the Government put forward. A lot of the complexities described—speaking as a person who has been involved in legislation for the whole of his working life—are no more complicated than any other domestic legislation. For every example of ultra-complexity in relation to the European legislative proposals, one could find just as many in relation to other questions in the domestic field. The question is whether there is some kind of judgment that one could bring to bear to ensure that
they look at the Explanatory Memorandum, which is produced by the Government, which itself purports to set out in simpler language what it is that the actual legislative proposal amounts to.

You might find it useful when you are doing what is suggested, to look at the Explanatory Memorandum as a reasonable test. We are not asking people to consider the finer detail. What we are asking people to consider is whether it is legally or politically important—that is our job.

David Keighley: Yes, I understand.

Q344 Kelvin Hopkins: One of the points I made in the interview with the BBC is the people they choose to have on when they are in discussions. One can choose a leader from the three separate parties. I will choose someone from the past: John Major, Tony Blair and Paddy Ashdown all have identical views on the European Union, but they are from three different parties and they could be portrayed as being politically different when actually they are the same. Having a genuine range of views, with people with genuinely different views from the left and the right, is very important in political debate. The BBC sometimes misuses its power in this way.

David Keighley: The word that came to mind was "laziness". In the pressures of a newsroom, you go to speakers you know you can get, quite often. It is not necessarily laziness; it is just expediency. We have made this point many times in our reports that time and time again you do get the same people coming up. You do get Kenneth Clarke with more regularity than other speakers. Interestingly, they had, as a speaker from the left, Bob Crow on Question Time last week, but I have never heard Bob Crow on the Today programme talking about the EU or withdrawal. I am not making any point other than that you would expect him to be there sometimes—given his prominence, given he is a trade unionist and given that he has got strong withdrawalist views. However, he is not.

Q345 Henry Smith: Your memorandum has been critical of the BBC’s response to the Wilson review. What is the action you believe has been taken in response to that?

David Keighley: Do you mean over the years since Wilson? Well, they appointed a Europe Editor, who was, initially, Mark Mardell but is now Gavin Hewitt. That was an important step and that did elevate the Brussels bureau up in the hierarchy. What the BBC has claimed since Wilson is that their coverage of the EU has gone up. Our surveys go back to July 2003 on a regular basis, and they show that the proportion of the EU coverage in the two periods in 2003—this is EU coverage in relation to the whole coverage—was about 5.6/5.7%. Then in March to June 2004, it went up to 9.8%. At the time of the Lisbon debate, in the first half of 2008, we had the feeling, at the time, that it was not being reported very much by the BBC.

Q346 Mr Clappison: Can I take you back to the answer you gave just now? Could you repeat it, please? I am very sorry to ask you, but I was very struck by the figures you were giving for the European coverage in the first half of 2008, in January to March and then March to June.

David Keighley: March to June 2008. Our 12-week monitoring period, the proportion of EU output in the airtime as a whole was 3.3%.

Q347 Mr Clappison: What was January to March?

David Keighley: Our surveys are every three months.

Q348 Mr Clappison: Would that survey include debates in Parliament and debates on the Treaty of Lisbon? It was at the time that Parliament was debating the Treaty of Lisbon, in the first half of 2008. I had the feeling, at the time, that it was not being reported very much by the BBC.

David Keighley: It was not.

Mr Clappison: I put that to the BBC when they gave evidence to us and your figures would tend to confirm that.

David Keighley: Yes. These are headline figures. This is not how you judge what our work is about completely. You need to read our reports to see what we are actually saying.

Q349 Mr Clappison: I think you agreed with me a moment ago that it was not reported very much on the BBC. Do you think that was a failure in their duty as a public broadcaster? It was a major debate, which was taking place over a long time in Parliament and was recognised as a major constitutional debate on a European treaty. It was hardly mentioned.

David Keighley: Over this period, we said in the report on several occasions that the BBC was not reflecting those debates properly.

Q350 Mr Clappison: There is an independent “breadth of opinion impartiality” review under way, led by the former broadcasting executive Stuart Prebble, which will include an analysis of the BBC coverage of immigration, religion and the EU. Have you contributed to that review?

David Keighley: Yes. We gave evidence to Mr Prebble in here before Christmas. We were with him for over two hours.

Q351 Mr Clappison: Can you share with us the flavour of your contribution?
Chair: In relation to the Wilson report recommendations, I recall that there was a special section, because this took place in the period between May 2005 and May 2006. It was a year’s pause for them to do certain things.

David Keighley: Then they came back again, yes.

Chair: I think I am right in saying that one of them was to do with the question of the treatment of the referendum, which was then the constitutional proposals, which were being put forward by European institutions—

David Keighley: Yes, I have the point here. It is point number 12 of Lord Wilson’s recommendations.

Q 352 Chair: Are you conscious of the fact, as would appear from the report, that indeed there were papers produced for internal use by the BBC as to how to conduct a referendum programme? In other words, were steps taken to try and investigate the questions that should be asked of the various political parties and the participants, academics or whatever, on an impartial basis, to get to the bottom of how this referendum that was then intended to take place would be conducted?

David Keighley: I am not party to that, no.

Q 353 Chair: You are not aware of any internal guidelines that were prepared? They appear to have been prepared.

David Keighley: From my knowledge of how the BBC operates in relation to strategy, it is almost certain that something would have been provided. I do not know what that is and I do not know how detailed it was or who was in charge of it. It would possibly have been Ric Bailey. We did have a meeting with Ric Bailey and various others around the time of the European elections in 2009 to discuss how that was covered, and there was quite clearly a strategy in place there about how to cover it. There is a difference. When there is an election pending or something formal pending—

Q 354 Chair: There is one difference, is there not, in respect of a referendum, which is a question of public policy, along the lines of the public purposes of the BBC Charter? In other words, it is not a purely party political question.

All parties are split on the question of European referendum questions, so that one would regard the treatment of a referendum and the run-up to it as something that should be tested, not by reference to the guidelines with respect to impartiality as between political parties, but as between the views on either side of the equation in terms of public purposes as to whether or not you are in favour of, shall we say in broad terms, a “yes” vote or a “no” vote. It is not a question of party politics; it is a question of public purposes within the framework of the Charter. Is that the way you would see it?

David Keighley: Yes, absolutely. It is an ultimate test of how you handle impartiality, given the range of voices and given the fact that there is not a formal structure for dealing with it. When you look back at how the last referendum on Europe was handled—a lot has been published—there were certainly all sorts of shenanigans going on behind the scenes, which led to the influencing of the BBC then. I am not suggesting the same will happen again, but there is the need to be very vigilant about that.

Q 355 Chair: Following on from that point you make about impartiality, do you think that the BBC defines impartiality in relation to the European question under the Charter and also in guidelines? How do you think this has evolved over time? How far do you think it affects editorial decision taking? In other words, are they really having regard to their own Charter and their own guidelines in respect of the European Union question?

David Keighley: The way they approach it, as Ric Bailey made clear to the Committee, is through the lens of due impartiality, which I understand the BBC to mean it is not one from either side; it is actually ensuring that, as an issue is dealt with over time, you get the range of voices involved properly reflected. The Bridcut report in 2008 took this from seesaw to wagon wheel. The analogy was that you have the spokes of a wheel and, rather than having a seesaw, you needed to think of impartiality as a full range of different views.

Has the BBC understood impartiality as far as the EU is concerned? I suppose the fundamental argument of our reports has been, over the years, that no, it has not. In particular, it has not sufficiently taken into account public opinion. It has not taken into account sufficiently the impact of EU actions on the UK. The lens that they have viewed it through has been too much that this is a process that is happening afar, rather than as something that is integral to what we are experiencing in this country.

I have not seen a written version of how the BBC views EU impartiality. We have had the admission by Mark Thompson in 2010 that he thought they had got EU coverage wrong, to an extent. He did not back that up with any research. He did not say where it was wrong; he did not say where he thought it was right. Part of the frustration in this equation in trying to decide what impartiality is, is that we do not know on what principles the BBC is actually working.

Q 356 Chair: Do you think it would be a good idea if they were to hold, shall we say, a public seminar in which all the participants who had an interest in these matters would be able to get together with people from the BBC, including editors, commentators and producers, and have a thorough discussion about this?

David Keighley: That would be one way, yes. The other way is what I said earlier—to have greater transparency as well about what they do.
There is one part of the equation that I have not mentioned, which I found very encouraging. We put in a complaint to the Today programme last year about one aspect of its coverage and Ceri Thomas, the editor of the Today programme, wrote back saying he disagreed with us. Eventually, he agreed to meet and we did have a very good meeting with Ceri Thomas in Parliament, during which he said he is going to engage in more dialogue with us about the research. That is the first time that that has happened in all the time we have been doing this research. I regard that as a very encouraging step and that is exactly the step to which I hoped, when I embarked on this research in the first place, the BBC would respond. It has taken them 12 years to respond in that way, but it is a start. I am hopeful that that will lead to more constructive dialogue.

**Chair:** Of course, it is not just the Today programme; it is many programmes that crop up—such as Westminster Hour and so on, as you indicated. Thank you very much, Mr Keighley, if there are no other further questions. If we have any further points that we would like to raise to you in writing, I hope you will be able to respond.

**David Keighley:** Yes, certainly.

**Chair:** Thank you very much indeed.
Wednesday 24 April 2013

Members present:
Mr William Cash (Chair)

Nia Griffith
Kelvin Hopkins
Chris Kelly
Penny Mordaunt

Stephen Phillips
Jacob Rees-Mogg
Henry Smith

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Examination of Witnesses

Witnesses: Robin Elias, Managing Editor, ITV News, and John McAndrew, Associate Editor, Sky News, gave evidence.

Q357 Chair: Thank you both very much for coming. As you know, we have already had the BBC in, and our prime concern is to try to identify, for the purposes of this inquiry into European scrutiny, how, in practice, what we are doing gets out to the public at large. Nobody can dispute the fact that we have the most enormous amount of European activity going on. Some of this is pure policy; a lot of it is also legislation. We thought it was important to get your views on the record, and ask the first question, which is as follows: Dr Julie Smith of the University of Cambridge, in her evidence to the Committee, stated, "We have a particular problem in this country about the nature of the debate [on Europe] and the depth of ignorance rather than the depth of interest." The question I put to you in the light of that is, what role do you think the media should play in improving the quality of public debate on Europe? Robin Elias, please.

Robin Elias: Thank you, Mr Chairman. I speak for ITV Network News. I am Managing Editor of ITV Network News and I have worked on ITN for 30 years. ITN also provides news for Channel 4 and Channel 5, but I am here to talk about ITV news coverage. I think we see Europe as a very important part of the political landscape and debate. Our coverage reflects all views around that debate pretty well.

We provide three main scheduled news programmes for ITV a day: lunchtime, evening and "News at Ten". That means in coverage terms about an hour and a half of coverage. One of the biggest challenges we have on a daily basis is how much we cover the European issue, and the political issue, business and economics news, foreign affairs and big events around the world, compared with what I would describe as more talking-point issues, issues of lifestyle and sport—there is a lot to get in. In our daily list today, of the stories we thought we would cover, there were 40. On any one network programme of half an hour, we probably expect to get 12 or 15 stories in. We are very limited in time, but that is not to say that we do not think we make a good decision, but I think our news programmes are required to be varied. We are regulated to provide programmes of due accuracy and due impartiality. We do that very well. Key to the ITV News ethos is a good mix of stories.

Just on your question about explanation, we have a good reputation within those time constraints that I have talked about for explaining sometimes quite complex issues in a very accessible way. That is a hallmark of ITV News, and we do that in a number of ways. Perhaps one of the hallmarks of ITV News is to tell heavyweight political stories through the eyes of people who are affected, so in your terms perhaps it is not seen as narrowly political reporting around the European issues, but we would like to find real examples of people affected by European legislation or political events at Westminster, and relate those to viewers who are watching, so that they would understand more.

Q358 Chair: Do you have any system for going through the agendas that you have and/or what is going on in Parliament and relating that to what you have just described, or is it just at random—you have heard on the grapevine that there is, shall we say, an immigration question and then you home in on that? We are working on a systematic basis, on agendas and on a vast array of documents. We have just had a meeting where we had a whole batch of stuff. Unravelling that and unpackaging it for the purpose of the public, as you sort of indicated, is one of the things that you regard yourselves as being particularly good at doing. You will not be able to do it if you do not know what our agenda is and know what is coming up in the lift. Do you have a system inside your organisation that enables you to track the material and say, "This is coming up. We ought to concentrate on that, because there is going to be a big debate on this issue, which has come out of the European scrutiny legislative process."

Robin Elias: I understand what you are asking, and as to a system, as you describe it, I would say no, but we have a well resourced political team based over the road in Millbank. We have six political correspondents, a news editor and three producers who are working on political issues. They are aware of this Committee's work and the mountain of material and decisions that come out of Parliament. It is difficult to set quotas for the number of stories we cover or the type of stories we cover. We do not look to do this much on politics one day or this much on foreign affairs the next day. We are regulated to provide programmes of due accuracy and due impartiality. We do that very well. Key to the ITV News ethos is a good mix of stories.

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sifting the amount of material, our Westminster office gets emails and press releases from the European Scrutiny Committee as well as many others, and they would sift through those.

Do we sometimes miss a story? Perhaps we do. I have to say perhaps the issues that you highlight become, in our terms, more of a story further down the line, when Parliament has debated them or it strikes a chord with the public. It is slightly a vicious circle: we want to cover news that is an issue of interest, but it is also very nice to highlight an issue before it has got into the public domain to be ahead of the pack and give that information.

Q359 Chair: Just before I ask Mr McAndrew if he would answer the same question, is there some kind of a concern between the BBC and Sky? It is quite extraordinary how often you switch on your television and you switch from one channel to the other, and then you find, actually—not entirely, but to a great extent—the same stories are being run. It probably makes one wonder whether there is not some kind of cartel in operation with an exchange of information that enables each other to be covering much the same kind of subject matter. Is that completely and totally unsubstantiated?

J ohn McAndrew: Is that one for me?
Chair: Yes. You are in between the two, because you were in the BBC for a long time.

J ohn McAndrew: Yes, I was. Let me just introduce myself first. I am an Associate Editor at Sky News, so I am very much involved in our day-to-day editorial process, which stories we will do, how we will do them and how we will present them to our audience. It is a very different kind of news from the one Robin was describing. We are of course a 24-hour broadcaster on many platforms. For us, any story can be replaced by any other at any particular time. We are concerned with stories that are moving, where the facts are changing that are maybe very rich in picture and very immediate. That is not to say that Europe is not a big story for us. Just a look, as I have been doing, over the last few weeks’ coverage sees lots of the substance of what you have been reporting on bleed into our coverage of many different stories as they resonate back home.

In answer to your last question about whether it is ever fixed up that we do certain stories and leave others alone, I would say the answer to that is absolutely not. There is certain collaboration on big stories where resources are pooled, as it might be a state occasion or something like that, but I am sure you are aware of that. Journalistically and editorially, that is absolutely not the case.

R obin Elias: Can I add to that, Mr Chairman?
A bsolutely I agree there is no cosy agreement on what the news agenda is. As a programme editor, I like nothing better than having a different lead story from what was on the BBC or what Sky has been covering all day, but there is a consensus about certain values. If you look at the vast range of newspapers, there is sort of an agreement on what makes news. They treat news in a very different way, but news is what will interest or affect the lives of people who are watching or reading the newspaper.

Q360 Chair: Mr McAndrew, I will ask you the same question I asked Mr Elias. What role do you think the media should play in improving the quality of public debate on Europe?

J ohn McAndrew: 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. What we can do is make sure we have authoritative voices there from our Westminster political team, our Brussels bureau and from our business teams that are explaining the issues when those stories are current.

Q361 Chair: You are quite satisfied that you are giving it the kind of coverage that you really think it deserves?

J ohn McAndrew: Yes, I am. We have done entire programmes and debates and hour-long specials from Europe during key summits recently. We have done an awful lot of coverage of the euro crisis in the last year or two. Just looking across the last few days, we have done various interviews. We interviewed the Deputy Prime Minister yesterday, and we brought up the Lords EU Committee’s concerns about the European Arrest Warrant, which we put to the Deputy Prime Minister. That interview ran and ran. While we may not focus necessarily on a particular Select Committee report, those issues that you examine do tend to bleed into our coverage a fair bit.

Q362 Chair: Although you and Sky do not have the same requirements as a public service broadcaster, do you see Sky’s duties to the public in the provision and explanation of European news as being fundamental to your viewers?

J ohn McAndrew: Yes, in the same way that it would be for Westminster or a story that is non-political.

Q363 Henry Smith: Thank you and welcome. How do you interpret due impartiality when it comes to the European question? Perhaps I could ask Mr McAndrew first.

J ohn McAndrew: One of the areas in which we make a great deal of effort is to solicit a very broad range of voices across our output, and we have the airtime to do so. Much discussion and production effort goes into, when we attack a particular story, whom we need to hear from and whether we are hearing a balanced argument across all sides. We have an interviews editor and team, who will keep a record of every interview we do. It is not just political balance; we make a big effort to make sure that we have different voices on different stories, so the same faces do not pop up on all the different platforms, and to get more women on air, ethnic diversity and things like that. Those discussions are had in advance. There is no formula to it. It relies on the sound editorial judgment of our output teams and our programme editors to cast the debates, discussions and interviews accordingly.

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across the day. We review our coverage a great deal to see whether we are stacking up—whether too many voices in one area seem to have emerged or something like that—and we listen to the comments of our viewers, which we get a précis of weekly. Clearly we do not take a position on any story ourselves, and we seek always to have a vast array of voices across our coverage.

Q 364 Henry Smith: Do you consider that due impartiality story by story, or do you consider that over a longer period of time?

John McAndrew: I would not say there is any kind of formula that we can then tick at the end of a story, when it is done and dusted. It is an ongoing matter of review, our bidding process and discussions with our editors about the direction we are taking a story in. Certain parts of our output may look at this kind of story in a different way. Adam Boulton has a programme at lunchtime that, while not overtly political, is devoted to giving more time to interviews along these kinds of lines—possibly political issues or interviews that need exploring in more depth—than we might in the more fast-moving daytime. Similarly in the evening, Jeff Randall may take a business slant on a European story or a political story. We try very hard not to just do this through the prism of MPs necessarily and have a left and right spat; we will try to look well beyond that and talk to the people it affects as well.

Robin Elias: If I can add to that, Mr Smith, the phrase "due impartiality" is required of us by Ofcom, the regulator. At ITN, we also have our own internal requirements that are outlined in the ITN compliance manual, which is quite a weighty document. On impartiality, that dictates that we give the main arguments from all sides on any matter of public debate or controversy. That is not a document that we keep hidden away: it is on every desk; every member of staff is required to have read it and signed an assurance that they have read it. It is even more than that: I firmly believe it is part of the ethos, the fabric, of what we do. When we are covering any sort of debate or controversy, we always examine it through getting voices on from left and right and from the full range of views within parties, as compared with the political spectrum at large, such as Kelvin Hopkins—and I could give you other examples from the Labour Party, or indeed from the Conservative Party. You are looking at some of them around this room, for example. I just ask the question: do you think that you are giving enough coverage to them, given the fact that there is this non-party-political element to the European issue, because it is pervasive? We have Kelvin Hopkins here, for example, who is an extremely experienced member of the Labour Party, but who is also extremely articulate on the European question.

Q 366 Chair: Would you regard the advent of UKIP for example, as being a reason why someone like Nigel Farage might get a great deal of attention, but not necessarily, if I can put it the other way round, those eurosceptics who have been involved in the arguments that UKIP is now engaged in for much longer and also perhaps in more depth? In other words, do you feel that you are giving enough space to them, given the fact that there is this non-party-political element to the European issue, because it is pervasive? We have Kelvin Hopkins here, for example, who is an extremely experienced member of the Labour Party, but who is also extremely articulate on the European question.

Kelvin Hopkins: Eurosceptic.

Chair: And eurosceptic, you see. What I am really getting at is that while one party emerges as having a lot of publicity attached to it at a given point and it is new, the fact is that there are others to seek out from the political spectrum at large, such as Kelvin Hopkins—and I could give you other examples from the Labour Party, or indeed from the Conservative Party. You are looking at some of them around this room, for example. I just ask the question: do you think that you are giving enough coverage to the full range of views within parties, as compared with the fact that UKIP, for example, is now articulating a view that they hold as their political party?

John McAndrew: What I would say echoes Robin's point a bit. When we tackle some of these stories, we would be much more inclined to take them on from the point of view of those affected. If we were doing something about the Working Time Directive, it may be that we want to speak to GPs. If we are looking at how EU legislation plays into the debate about alcohol pricing, it may be that we pick that story up with people who drink or think that it is a good idea or a bad idea, or who sell alcohol and things like that. I just want to be clear that, just because Europe is a heavily political matter, it does not mean that we will always examine it through getting voices on from left and right, eurosceptic or europhile Conservatives, or anything like that. We would rather take the story on its more consumer-facing merits, and go and pursue it in that way.
Committee as a resource in that respect, given that journalists, researchers and producers use this happenings on the floor of the House—do your national story—something that was prominent soverignty lock or something like that, and that have to operate within limited resources, when there is missing the point. A much more valuable question is much the workings of a Committee and Members on less coverage than five years ago, but focusing on how Workings within Westminster generally probably get incident, which got quite a bit of coverage, didn’t it? but not every Committee can have a Rupert Murdoch does not help, but I do not think it is critical to Robin Elias: newsworthy, I suppose. process itself may not, in the immediate sense, be news story. Of course, it runs the risk, as any other legislation will not in itself be newsworthy, certainly it may be. While broadcasters may well end up looking at the story once it has resolved itself to some degree, sometimes the process of scrutiny of legislation will not in itself be newsworthy, certainly speaking for a news channel that is very concerned with immediacy, changing facts and the breaking news story. Of course, it runs the risk, as any other story does, of taking its chances up against 10, 20 or 30 stories or even, like last week, only two stories that dominate the news agenda for the whole week. The process itself may not, in the immediate sense, be newsworthy, I suppose. Robin Elias: Some of the paper-based nature perhaps does not help, but I do not think it is critical to decisions on how much coverage the Committee gets. More witness-based Committees are more televisial, but not every Committee can have a Rupert Murdoch incident, which got quite a bit of coverage, didn’t it? Workings within Westminster generally probably get less coverage than five years ago, but focusing on how much the workings of a Committee and Members on all sides of the debate appear on television is perhaps missing the point. A much more valuable question is whether the issues, as they affect real people, are reflected in our programmes. I would say this, but I think we get that balance about right.

Q367 Penny Mordaunt: Clearly we do evidence sessions like this. We recommend issues for debate in European Committees and on the floor of the House. A actually, a great deal of what we do, and the heart of what we do, is document-based. Peter Knowles, the Controller of BBC Parliament, told us that this creates an immediate distance between the work of the Committee and broadcasters, because broadcasters tend to operate in a speech-based environment and like to film interesting things. Do you agree with that and do you have a view on the content produced by this Committee in our reports and on our website?

John McAndrew: I suspect the argument he is getting at is that, while the substance of what you are scrutinising and the consequence for people in this country is going to be sometimes newsworthy, it will not always be newsworthy. In itself, the publication of a report might not necessarily be news, no matter how important it may be. While broadcasters may well end up looking at the story once it has resolved itself to some degree, sometimes the process of scrutiny of legislation will not in itself be newsworthy, certainly speaking for a news channel that is very concerned with immediacy, changing facts and the breaking news story. Of course, it runs the risk, as any other story does, of taking its chances up against 10, 20 or 30 stories or even, like last week, only two stories that dominate the news agenda for the whole week. The process itself may not, in the immediate sense, be newsworthy, I suppose.

Robin Elias: Some of the paper-based nature perhaps does not help, but I do not think it is critical to decisions on how much coverage the Committee gets. More witness-based Committees are more televisial, but not every Committee can have a Rupert Murdoch incident, which got quite a bit of coverage, didn’t it? Workings within Westminster generally probably get less coverage than five years ago, but focusing on how much the workings of a Committee and Members on all sides of the debate appear on television is perhaps missing the point. A much more valuable question is whether the issues, as they affect real people, are reflected in our programmes. I would say this, but I think we get that balance about right.

Q368 Penny Mordaunt: Given that, and clearly you have to operate within limited resources, when there is an issue that is particularly interesting, for example the early report that this Committee did on the sovereignty lock or something like that, and that would give your journalists an interesting slant on a national story—something that was prominent happening on the floor of the House—do your journalists, researchers and producers use this Committee as a resource in that respect, given that they might not be spending enormous amounts of their time focused on the output of this Committee?

Robin Elias: I spoke to our Westminster team about this Committee. They are all very aware of what you are investigating, scrutinising, and aware of the website links, press releases and so on, but there is an awful lot of that material that is coming out of not just this Committee, but many others.

Q369 Chair: One of the things we heard in evidence from the BBC—I am paraphrasing slightly—is that it is all frightfully complicated and we do not really think that people outside understand it. There was a kind of inference that they did not understand it themselves, to some extent. The real question is this: with the vast array of legislation that is going through, which some people would put as high as 70% of everything that is legislated in Westminster itself, it does seem a little incongruous, when all that is going on and it is the only means of the public knowing that it is happening—and it is, as you said earlier, affecting their daily lives—that there is not really any system in place for evaluating exactly what it is that is being legislated, other than drawing it in from foreign correspondents who are in Brussels. Then, of course, they are themselves being fed the information by the European Commission or whatever. I am trying to probe into this issue of where you get this information from and whether and to what extent you are satisfied that, given the impact it must have on everybody the whole time, you are really digging into it or are you simply receiving information from a foreign correspondent that that is a really important question that has come up? You then give it coverage, but it is not necessarily related to the fact that it is being implemented in this place and, for example, debated on the floor of the House of Commons. Abu Qatada today is going to be all over the news, but we are dealing with things the whole time that, one way or another, if you were looking at the whole range of our material in relation to Syria, Mali and all these other things, are extremely relevant to what is affecting people’s lives, both here and abroad. I am not quite convinced at the moment that you have a system of being able to go through your team at Westminster to get the perspective, as to what it is that we are doing. We are not doing this for our benefit; we are doing it for the benefit of the public. Under the Standing Orders, we have a requirement to go through the legislation and to require it to be debated if we think it is legally or politically important. When we do that, we are, as a result of this European Scrutiny inquiry, taking a look at the extent to which what we are doing actually ever gets out to the public. To paraphrase, some people say the best way to keep a secret is to make a speech in the House of Commons. Do you get the sense of what I am saying?

John McAndrew: Yes, I do, but I again have had conversations with our political teams, our Brussels team and our business team about the work of this Committee. All seem well aware of what the Committee does. I was pointed to bits of reports that have had commentary from people like Adam Boulton and Joey Jones, when they are at EU summits. I would
I would also add that when a legislatively contentious issue is debated on the Floor of the House, or indeed in Committee, or if newsworthy or news-making people are called to give evidence, it most certainly would take its chance as a story to be covered that day. A gain, I go back to my earlier point: that would be up against whatever else is going on. I am sure we are taking live coverage of the House of Commons on Abu Qatada as we speak. It is a big story and rightly so.

Q370 Chair: There are issues that do come up that are debated on the Floor of the House. We asked the BBC this and we got some quite interesting answers, because it seemed quite clear that, in terms of our Committee proceedings for example, very little was actually being reported to the public at large. As I said, we are not doing this for our benefit; we are doing it for the benefit of the public. When we do that and then it is not reported, we are just left in the position of knowing it is important, knowing that the matters should be covered and yet really having any reason to believe that it is ever going to get to the people whose daily lives are affected by it.

John McAndrew: I cannot speak for them, obviously enough. What I would say from Sky’s point of view is that we do not have political programmes as such. We do not have programmes devoted to Europe. Our programmes are just strands of rolling news. They may do stories in a different order, refresh the production or present the stories in a different style as the day goes on, but there is not somewhere that would necessarily be a home for something like that.

Chair: It is not quite like the BBC.

John McAndrew: That is what I am saying. We are just concerned with the main stories of the day.

Q371 Stephen Phillips: I just wanted to try to cut through it a little bit if I could. Being frank, we turn out a lot of paperwork. Now, some of that paperwork is highly critical of the Government, for example, and one would think that, if it were being read and assimilated, or even the press releases accompanying it, one would also think that what we are and what we are in the news business would be interested, yet my brief experience on this Committee in the last three years points to the contrary. The question I want to ask is, is it the case that our press releases and reports are being read, given the limited resources that you, your producers and your journalists have? If they are not, which I quite understand—you are faced with news decisions every day and vast amounts of material coming in—what can we do to make it better and more easily accessible for editors and producers to make the judgments that we think ought to be made about important matters that we are debating?

Robin Elias: To address the question about language in answer to what the BBC said about impenetrable language and the dryness of the subject, I would be very disappointed if our coverage was dependent on having things that were immediately and very easily understandable. Part of the job of any journalist, and certainly on a popular channel like ITV, is actually to cut through complex subjects and find a way of making them relevant to viewers. That is our job, I would say. It does not really address your question perhaps, or does not give you the answer you would like to hear, but regarding the volume of material and how much of what you do gets on mainstream television news, I think you should have quite low expectations about that, because of the time restrictions we are under. The balance argument I outlined earlier is probably the biggest challenge you have.

Q372 Stephen Phillips: Can I give you an example, and then maybe Mr McAndrew can come in as well? There is a massive decision coming up in the United Kingdom about the justice and home affairs opt-out. A highly critical report of the Government was published by this Committee relatively recently—no coverage at all—and it is an issue that does not seem to have featured in the broadcast media at all, as yet. Admittedly, it is coming down the tracks, but it is a very important decision for the United Kingdom coming up. Is there something that we could have done not necessarily to bring this Committee into the news, but to get the issue into the news?

John McAndrew: I think you might be referring to the same piece of legislation that I said earlier we did give some coverage to yesterday, and put to the Deputy Prime Minister. It is not that we do not consider that newsworthy. It is very hard to talk about publication of a report that may have happened whenever it happened without knowing what else was in play on any particular day. I know that our Westminster team will see the press releases when reports are published. Discussions will be had about whether the content is newsworthy. A similar point to Robin really is that, often a Select Committee report is not necessarily going to make a major piece of news in itself, depending on the nature.

Q373 Kelvin Hopkins: This inquiry arose, as you may know, from a perceived bias in the BBC in particular. There was a report produced eight years ago concluding that the BBC had a deeply ingrained pro-EU bias, which they were almost unaware of themselves, but everything they said was pro-EU. More recently, only a few weeks ago, we had an academic report presented to us that said they had not changed, in spite of that critical report. We are really concerned to see that we do not have the same kind of thing in ITV. I must say that I am a great admirer of the BBC in almost every other way, but on the European issue this institutional bias is at complete odds with the views of the population, for example. They will say, “Well, it is all very complicated; just think of yourselves as being pro-European.” I also have to say—time and again I have to repeat this—the European Union is not Europe. Europe is a certain lot of countries, which are wonderful and I have the greatest affection for them, but I have a deep criticism of the European Union, which is a political construction on those countries. If broadcasters simply talked about “the EU” or “the European Union” instead of “Europe”, that would be a step forward.

You have mentioned “Europe” several times already
this afternoon as if it is Europe, and it is not: it is the European Union, which is a political construct that could easily be amended and disappear next year. Europe would still be there—these wonderful countries.

Robin Elias: I understand your point. When it comes to balance, you talk about an organisation or coverage being pro-Europe. I looked at some of the weightier European stories just this year, and probably the biggest one was Cameron's speech about the referendum. I looked at the range of voices within that, and it was not only done on party lines. In fact, we did three pieces on "News at Ten" that night; it covered half the programme. In coverage terms, that is a big commitment. We did the main piece on the speech itself and reaction from party leaders, but then we did a broader piece. We went to Paddington and had businessmen coming off the Eurostar. Unsurprisingly perhaps, they were pretty pro-Europe and were voicing that view. We also did a piece in Europe itself with our Europe editor, which is another indication of how seriously we take it—that we appointed a Europe editor last year just to look at these issues across the continent.

Overall, that coverage had real people from different viewpoints, and politicians not necessarily on party lines talking about the issue. In fact, the following day we did a piece out of Davos, which was going on at the same time, and focused on businessmen. One, Sir Martin Sorrell, I think it was, was very pro-Europe, and then another businessman was talking specifically about the weight of European legislation and how that was strangling his business. All the way through, I was very satisfied that that was not only comprehensive, but very balanced coverage and actually told in a way that viewers would understand and get the significance of.

Q374 Kelvin Hopkins: With this complication and these difficult issues, it is the job of journalists to make issues understandable to the public. Good journalists can do that. Certainly when I speak about European Union matters, I talk in a way that is understood by the people who hopefully vote for me. I have seen broadcasts, again, where we have had an apparent debate about what people call "Europe" and I would call the "European Union". You might have—and I shall use some names from the past, which is another complication—and I cannot think of the last time we approached a story like that, with a simple three-handed, one-from-each-party debate. Much more thought would go into it, not least because it does not sound like it would be very interesting. When we take our commitments to impartiality very seriously, and we take our obligations to our viewers very seriously. If we provide them with something along those lines, they are likely to switch over.

I also think we go to great lengths in our political coverage, be it about Europe or indeed Westminster, to try to explain some of the debates around it. If you look at even the way we tackle Prime Minister's Questions, which is fairly straightforward, we do tend to go into an edit suite afterwards. Our deputy political editor will pull apart things you have missed, nuances of the exchanges or something perhaps you did not see over to the side of the shot. We will throw that kind of effort at our political coverage, as a way of making it engaging.

24 April 2013 Robin Elias and John McAndrew
you; I am just interested to know what your reaction is.

John McAndrew: My reaction is, yes, of course it is. It is the kind of thing that we do in our business and economic coverage a great deal, both in our business bulletins with our economics editor and on Jeff Randall’s programme. It is precisely the kind of story he would do. Whether we have done that particular one over the last few days, I do not know.

Q376 Chair: It is pretty significant, is it not?
John McAndrew: It is certainly that. What I would also add is that, for a rolling news channel, if you take last week, which is when I think you said these numbers were published, that was a week where we had a huge story coming out of Boston, a big story coming out of Canada and a big—

Kelvin Hopkins: That is Baroness Thatcher. I am not saying that is why that specific story perhaps did not get more publicity. I do not know the answer to that, but that, I hope, illustrates that any story, whether it comes out of Committee or whatever scale it is, will sometimes be up against something that is very immediate, very serious or very picture driven.

Q377 Chair: What I am really saying is that—not to approach this in an accusatorial fashion, but simply as a matter of system—the assumptions that are made by Government that the single market is necessarily good for you may be part of the mantra. The question whether it is really working to the advantage of the United Kingdom is something that is challenging and also merits a degree of continuing analysis, over a given year. Although it may be that I have just picked on something that came out recently and I happen to know it is on the immediate agenda, I am just asking—whether in relation to the economy, criminal justice, energy or whatever—if your organisations were monitoring what was happening out in the European Union, whether it might be helpful to you to identify things that you would pick up from having a very systematic approach to the kind of documentation that we produce, or would you take the view that the BBC is probably right and it is too complicated for people to understand, even if it affects them?

Robin Elias: The way you put those figures was pretty easy to understand. As to whether I think that, as a revelation, is a news story in itself, off the top of my head I would say probably not. Facts such as those should be part of the information we give out when we are doing a story about the merits of the single market, new growth figures or whatever; that is a way in which that information could be disseminated to the public.

I will just make a slightly separate point. It is interesting when you talk about how much information you deal with and analyse gets in front of the public. On scheduled news programmes, for the reasons I have said, it is tough; it is a very high benchmark to get on. We, as all news organisations now, increasingly rely and depend upon websites. The ITV News website is a great platform and vehicle for putting context on to sometimes complex issues. I looked at some of our European links on there around the debate about the European Union budget last year. On our website, there was a blog from our political editor that gave a lot of context about Cameron’s position and where other European countries were coming from in the debate on spending, and links to other factual information, tables and figures. That, combined with television bulletins—and we do cross-promote details and coverage of both—is a way of adding that context and, I think, serving a real benefit to the public.

Q378 Kelvin Hopkins: With the BBC, we have two reports on the BBC eight years apart. The evidence is conclusive in my view: they are definitely pro-EU in their bias. It may be very conscious, it may be semi-conscious, but they are pro-EU. Have any criticisms of that kind of bias been levelled at either ITN or Sky?

Robin Elias: To my knowledge, no. I would be surprised, because I genuinely believe our coverage is impartial. I deal with viewer complaints, complaints by political parties and complaints from Ofcom, which obviously we treat very seriously indeed. I am not saying there has never been a complaint, but I am not aware of any tide of complaints on one side or another. Almost whenever we cover political stories, there will be people complaining either from one side or the other. If we are getting complaints from both sides, that is generally speaking probably quite a good sign that we are not biased on either side of that debate.

Q379 Chair: You do not take the view that the European issue and the point that Kelvin was making earlier about the difference between the European Union and Europe, if I can put it that way around, is too boring?

John McAndrew: No, we do not take that view at all, and we do huge amounts of coverage of things going on in the EU. As I have said before, we have entire dedicated programmes and special editions of strands; we present programmes from there and send presenters over there—our high-calibre political and economic team—to go and explain these issues. I do not take that view at all. As regards complaints, much like Robin says, any time we do a story about the EU, Europe or pretty much anything else, we are going to get a lot of communication from our viewers on it and it stacks up on both sides, which means you probably land somewhere in the middle. In terms of official allegations of bias in any way, no, nothing like it.

Kelvin Hopkins: There has been no academic research.

John McAndrew: No.

Q380 Chris Kelly: We often recommend documents for debate in European Committee. Peter Knowles from the BBC told this Committee that European Committee debates are “not advertised to broadcasters by Parliament... They are off our radar.” How aware are you of debates in European Committees and how frequently do you cover them or interview Members appointed to serve on them? Can I ask each of you in turn?
Q381 Chris Kelly: Have you followed up with a Member who has been involved in a Committee?

Robin Elias: Similarly, I am not aware of a news report of coverage of this Committee on mainstream programmes. As I said earlier, it is slightly dangerous only to look at the conventional way of reporting political news. We would try, with any political story, to find a way of telling it not necessarily through the eyes of politicians. I do not want to mislead you; in the dealings of this Committee, no, I do not think there has been coverage.

Q382 Chair: For example, the Public Accounts Committee is one of the only other scrutiny Committees; there are two scrutiny Committees effectively. There are Delegated Legislation Committees as well of course. Basically, it is our job, and that is what we are having this inquiry about: to gauge your reactions to the questions that we are asking. We want to inform ourselves, as some of my colleagues have been saying, on how we can improve our input, so that the public at large are aware of something we know is going on all the time. It is sometimes a bit subterranean; it is going on and it is affecting them, but we do not have any means of communicating other than doing the job that we are doing by examining the documents and making the reports. You are the means of communication these days with the public at large, so it is a democratic question, which is the extent to which Parliament, in examining these questions, is able to project the story, the essence of the reason for this inquiry, and it is also what our Standing Orders effectively require us to do, but we cannot communicate with the public except through the broadcast media, whether it is radio or television. They might not put on the material—I say “they” because I am not accusing you; I am just simply looking for a way through the thicket to try to get more attention on what is really happening to their daily lives. I just feel that we are conscious of the fact that you are interested in news and we are conscious of the fact that you have a system. Whether what we are doing is getting through to the public at large is really what we are interested in, for the purposes of these proceedings.

Q383 Chair: That is the issue, because when you are doing that you are actually saying something, which is, “It is interesting and it is news that there are accusations made against Starbucks, Google or whatever it happens to be.” We are not, in fact, in that position, but what we are doing is no less important. They are answering the question whether the public are getting value for money. We are saying, “With regard to the vast range of legislation that is affecting you, are you aware of what is being done to you?”

John McAndrew: Yes, but what often happens is that, when those bits of legislation get to the point at which they meet the consumer or the person who is affected by them, a number of those stories are covered. Again, I would say something like alcohol pricing, where we make mention of the EU’s role in that story. While we might not necessarily focus on the process of the scrutiny, the story as it affects people at least has the potential to be one that will be covered, if it affects people, is interesting and is newsworthy.

Q384 Chair: It could be too late. It has happened already, by the time the legislation has gone through. That is part of the process that we are engaged in. We are drawing attention to things before those decisions are taken.

John McAndrew: I am not saying that would be a rule. I am just saying there are examples. Alcohol pricing has not necessarily happened.

Q385 Henry Smith: Do you think that the coverage of European issues would be increased if there was a dedicated, as indeed was the case so many years ago, European oral question session on the Floor of the House of Commons, or perhaps a regular debate in a forum like Westminster Hall, for example?

John McAndrew: I do not know, and I feel slightly uneasy about giving my view as to what would gain more coverage, because that is not really my job. What I would say is that Prime Minister’s Questions features. If there is a big story going on in the economy, Treasury Questions may be featured live on our channel. The rest of the time, if it is fairly day-to-day material, it will not. In the same way, we might take live coverage of a debate about a European issue on the Floor of the House anyway, as we have done when there have been various discussions about financing of the EU and things like that, or any contentious issue, the sniff of a rebellion or something like that. We will feature that. As to whether it would increase coverage, as I have said, I feel quite satisfied with the amount of coverage and the way in which we do it.

Robin Elias: I suspect the answer is no. It presupposes that the reason this Committee does not get coverage is that no one knows what is going on. We are aware of what is going on. If it was debated in the main Chamber, that would not affect it. It would still have to meet the quite tough requirements and high benchmark for getting on a scheduled news programme, as far as ITV News is concerned.

Q386 Chair: If it is not news, it tends to have a fairly low priority. Is that about it? If it is not news, it does
not tend to get a very high priority, realistically speaking?

Robin Elias: Yes, that is right.

Q387 Chair: You are not really that interested in the process?

Robin Elias: The process in itself is a dry subject, and therefore we would find it difficult to get it on to a half-hour programme.

Chair: You have been very candid. Thank you very much for coming. That is the end of these proceedings.
Wednesday 8 May 2013

Members present:
Mr William Cash (Chair)
Mr James Clappison
Michael Connarty
Nia Griffith
Chris Heaton-Harris

Chris Kelly
Jacob Rees-Mogg
Henry Smith

Examination of Witnesses

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

Chair: Welcome Sir Jon and Simon Manley. You are here on the auspicious day of the Queen’s Speech. Sorry that it is a bit late in the afternoon, but we regard this sitting as a very important opportunity to ask you some extremely important and relevant questions in relation to the scrutiny process. In a nutshell, much of it goes on in Parliament, but the truth is that an enormous amount of analysis, advice and scrutiny goes on where you are, in UKREP and Coreper. Therefore, the complementarity between the two is something that we want to explore.

If there is anything that you want to say by way of an opening, that would be very helpful. If there are further questions or points you would like to ask or make as we proceed, please feel free to do so. This is the first time that I am aware of that the ambassador has been in front of the European Scrutiny Committee, and it is a unique advantage and opportunity.

Sir Jon Cunliffe: May I say a few words at the beginning about what we do and how we do it?

Chair: Michael Connarty has some questions to ask. Perhaps you can comment on that after Michael has started to see whether we have covered the territory.

Q388 Michael Connarty: In the past, the Committee has spent some excellent days with Coreper discussing the whole UKREP structure, which was very helpful to the Committee, certainly when I was present. As this is not just for our own information, but for those who might wish to look seriously at how policy and decisions come to be made in the European context, it might be useful for the record for you to explain how the House of Commons scrutiny of European documents fits into the mechanism of the Brussels legislative process, with particular reference to four areas, although you might like to elucidate on others, including the negotiations in Coreper, the Council A and B points and how you deal with them, the scrutiny reserve that we hold and the operation of the qualified majority voting system.

Sir Jon Cunliffe: Thank you very much, and thank you, Mr Chairman, for the opportunity. I had not realised that I was the first witness to appear. The way in which I look at the matter is that we are the Brussels operational arm of HMG on European business. We do not have responsibility for the Whitehall end of the scrutiny. We do not do the Explanatory Memoranda. The policy resides in the Foreign Office and the Cabinet Office, but we have a number of functions in relation to scrutiny that are essential for the system to operate.

We put the scrutiny reserves down at the beginning, so whenever a document is sent for scrutiny, we ensure that it is recorded at the Brussels end that Parliament has not expressed an opinion on it and that there is a scrutiny reserve. At the end of the process, we are the ones who lift scrutiny reserves, because the Government’s agreement will always go through either a Council or as an A point, which I will explain in a moment. We are a safety net that ensures that we do not agree to things by accident, with scrutiny not having been completed. Therefore there is an operational role.

However, there is much more than that. For the system to work well and smoothly—we deal with a wide range of dossiers, files, that are subject to different procedures and time scales—it has to be more than just automatic rules and procedures, although they are the kind of underlying part of the system. It depends on the case officer in UKREP and the case officer in Whitehall dealing with that having a close relationship and being aware of where issues are through the scrutiny process and what that process demands.

From the UKREP end, we provide two things in the system. The first is advice on the speed and nature of the negotiation. That can often be difficult to predict—things go quickly, then slowly, and suddenly for all sorts of reasons they wake up and it is imperative that they move quickly again. We do not control that timetable; the Presidency controls it. Other Member States have views and the European Parliament controls its timetable, which interacts with other things. Therefore we have to be on the ball and know where it is going and when, so that if scrutiny has not been completed, if the Committee has held something over, we can talk to the Department in London, which can talk to the Clerks of this Committee and a way of handling that can be dealt with. Sometimes it can get quite rushed and last-minute, because frequently we get bounced by things we were not expecting, but it depends a lot on case officers in Brussels and in London talking and being aware of it.

Secondly, we can provide advice on where we think the negotiation is going. That is more difficult, but you can see where amendments might be coming from. To give a hypothetical example, if scrutiny has been cleared, but you have asked to be kept informed, or scrutiny has not been cleared and the Committee has asked some questions about particular things, we can...
see that amendments are developing in those areas that would change the nature of the original proposal deposited for scrutiny. We can then give advance warning of that. There has to be a close relationship between the two parts.

We are at the intersection of three processes: European business. First is the departmental and Cabinet policy clearance process. That is important, because we do not do anything in Brussels that we are not instructed to do from London when it comes to taking that forward. The second is the scrutiny process, which is Parliament’s process. The third is the European process, or processes, because different things are done in different ways. We have to ensure that those three processes move forward in a synchronised way and slow down or catch up with each other to make the whole thing work. To make that happen you need on-the-ball people talking to each other and to the Committee.

Things come to Coreper. At the end of my Coreper brief everything has the scrutiny position. Something may well emerge in Coreper. At that point, the person sitting next to me, normally the desk officer for the file, will have a discussion with me about whether it is moving back to London. There has to be a discussion about, “Do we need to go back to Ministers?”—that is a departmental decision—and, “Where does it fit within the Cabinet Office clearance and the scrutiny process?” In Coreper it is quite normal to say, “We have not cleared scrutiny on this,” and the Presidency has to take that into account, or, often, “We would prefer that this is slowed down.” We do not always get what we want, but I put down about 70 to 80 scrutiny reserves a year on business coming through, where we say, “We have a scrutiny reserve. We cannot do it.” Other delegations do the same—some more than others. I think we, the Scandinavians, and perhaps the Germans, are the most active in scrutiny reserves. But it is quite normal and it is an expected part of the process.

Occasionally, in Coreper it will cause a problem, because there is an international meeting for which an association agreement is needed, a mission needs to be renewed or rolled over, or we have to hit a timescale for the EU programme. So sometimes people say, “Well, can’t you move it? Can you do something?” etc., but the most we will do is slow it down. We will not accept the I point on the Coreper agenda—what we would call a scrutiny reserve—without written confirmation of those two points. It has to be in writing. We have to have that written form back, because once we have said yes, it is agreed and then you are at the end of the legislative process—there is nothing you can do.

Q389 Mr Cash: You may or may not be aware of this rather interesting research done by VoteWatch Europe, which published an analysis of this in its annual report of 2012. It showed that between 2009 and 2012, of the 309 proposals put to the vote using QMV, 65% were adopted unanimously and 35% saw one or more Member States abstaining or opposing. When it looked at the different Member States, it concluded that the Member State which voted against the majority most often was the United Kingdom; before we start congratulating ourselves on that, if it is a matter of congratulation, approximately 90% did go through. So there are only relatively few occasions when the policy clearance, with the European Parliament. So sometimes people say, “Well, can’t you move it? Can you do something?” etc., but the most we will do is slow it down. We will not accept the I point on the Coreper agenda—what we would call a scrutiny reserve—without written confirmation of those two points. It has to be in writing. We have to have that written form back, because once we have said yes, it is agreed and then you are at the end of the legislative process—there is nothing you can do.

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Sir John Cunliffe: If I can correct one thing, and then go through the process. The discussion on policy clearance and non-policy clearance is not with the Cabinet Office; it is with the Department that owns the dossier. All of the big proposals have a round of Cabinet correspondence before they start, in which the Government’s mandate is set. All Departments are under the chairmanship of the Foreign Secretary. It is another process that runs alongside the scrutiny process.

The Government’s mandate is set, and if things change the Minister will write back to the Cabinet Committee. So unless there is a trade-off between Departments—that can often happen in areas such as energy and climate, for example; with the Treasury you have three or four Departments determining the line, and it would go back to the Cabinet Office for clearance of the line—normally it is the Department concerned.

In the 16 months I have been in the job, I have not had anything like that happen unexpectedly at I point level. All of these proposals go through working groups. Some of the working groups go on for a very long time. Some of the legislation is 2,000 pages long. Some of the working groups deal with the renewal of a mission, or whatever, and it is quite a short proposal. But I will know what is happening on the dossier and where we are.

Coreper is split into two. I head Coreper II, which deals with foreign policy, justice, and home affairs; economic, institutional, and single market matters go through my deputy, Shan Morgan, in Coreper I. One of us will know where the file is. The desk officer will come to us some time before and say, “Look, we haven’t got a blocking minority any more. Some of our friends have peeled off, and we have to choose what to do.” That can happen during the triilogue process as well, but I would know about it long before it came to Coreper as an I point.

At that point, there is a decision to be made by the policy department. There is a value placed on consensus in Brussels, and you do not say, “I might as well give in,” but, “Alright, we will go along with this, but we require the following changes.” In order to do that, you will need to say, “Okay, let’s do it in that way.” Sometimes you cannot do that, and sometimes one wants to vote against or abstain because the position is very clear.

I am not sure about the 90% figure—whether it is a good or a bad thing. But in all those cases, a decision will have been made where to vote. And on any file of any significance, that will have gone through ministerial clearance in the Department. By the time it gets to me as an I point, I either let it through because we have written confirmation, or—this does happen occasionally—there has been a mistake in the process. A lot of these things go through.

Sometimes I think there is the odd bounce. Sometimes I think there is the odd bounce. Something turns up, and the I point co-ordinator says, “This has not got policy clearance” or “This has not even been agreed with the working group”, and then we say, off the agenda, that there has to be a substantive discussion. I am sorry, that is a long answer to your question.

Chair: Thank you very much for that.

Q390 Michael Connarty: That was a very useful explanation. I have two points on the process. When it gets to an I point, is there often a change between the I point and it coming up as an A brief or decision at the Council, or are all the negotiations really done before it becomes an I point?

Sir John Cunliffe: Pretty much. It is very rare for an I point to change between Coreper and the Council, and the idea of it being an I point to Coreper is precisely so that we can check that this is the thing that has been agreed in the working group, and that everyone is happy to agree it. You sometimes get linguistic changes, and occasionally on some of the fast-moving things—in foreign policy it happens a lot—a reference to a meeting that had not taken place will be inserted afterwards, but it is non-controversial.

Q391 Michael Connarty: My second point is: at the point when you get ministerial indication that an agreement will be accepted, does Coreper get to know what we think of the Minister’s proposal? On something that would normally come back to us with the recommendation that political agreement had been reached and, therefore, we would lift the scrutiny over, do you know the Minister eventually has to take that decision. However, do you get an indication of whether the Minister makes a decision to do it against our wishes—despite our wishes—or do you just get the Minister’s view?

Sir John Cunliffe: Are we talking about a scrutiny override? A scrutiny override is a pretty big thing, so first of all we have to know, coming up to it, that there is a possibility of a scrutiny override. If we are on the ball, we should be talking to the Clerks and saying, “This thing is likely to come and move very quickly”. Essentially, departmental officials and U.K. officials do not like putting Ministers in that position. To be honest, I do not think Ministers like being in that position, so it is a fairly large thing.

I think there are a couple of areas where structurally it tends to happen, around sanctions or whatever, which may be a bit different. In such cases, we say, “I will have to know in Coreper whether I say yes, and whether we lift the reserve or whatever.” Or, if we have a reservation on the Minister has to know in the Council. You cannot duck; you have to say, “We are in favour” or “We are not in favour”, so the Minister will have to be consulted. A submission will then go up on the override, and of course we will know, and we will feed into that submission where we think others are and what we think the timetable is. It is a departmental submission, but much of the advice on what is happening in Brussels will come from us, because we are there and part of it. If a scrutiny override submission has gone up on my side, I will know about it.

Q392 Chair: There have been occasions when you mentioned the word “timetable”, which can be crucial in this context. We find that overrides take place that bear an uncanny resemblance to getting it through because you say, or somebody in Government says, “There is a real urgency on all this; look at our Standing Orders,” and therefore it is convenient, some might argue, to get this thing through and then simply...
to override us. Now, we do not take very kindly to that.

What I am really driving at is whether you have any thoughts on the mechanisms that apply at the moment when you are being pressurised by other Member States to get on with something and you know that the Government are inclined to agree to it, but at the same time you know perfectly well that we are saying that we do not like the look of it. What is the atmosphere, mindset and approach to that?

Sir Jon Cunliffe: It depends a bit on the nature of the dossier. Clearly, if it is a QMV dossier and we are going to vote against anyway, I think the override question to some extent does not exist, because we will vote against it. We are not necessarily under huge pressure because the issue will go ahead, but there will be times when there are other considerations. That might be when we are under pressure from Member States, or sometimes it can happen that we have got what we want but it is under pressure and there is a feeling that we need to close a deal quite quickly, because otherwise the deal will unravel with others if we hold it up. Or people will turn round to us and say, “Well, if you can only do this, we will give you something in return.”

Then there can be operational issues—if the matter is not rolled over in time the world comes to an end and we will have a gap and so on. Those are difficult considerations. We try to make the processes line up but sometimes we don’t manage to; they are out of our control. Then a decision has to be taken. I would say, though, that I have not seen a case where anyone has said, “We will simply override scrutiny.”

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. They would prefer not to be in the position of having to choose between different things. So it is our job to try to avoid them being in that position, by early warning, ensuring that you know the pace at which things are moving, but we try to slow things down as well. It does happen; the system provides for it to happen. Then it is a decision of weighing up different factors, but it is never simple and it is not done lightly.

Q393 Mr Clappison: I appreciate, Sir Jon, the skilled way in which you have endeavoured to explain simply a process that is byzantine-plus in the opinion of those who may be listening to this.

Can I take you back to a question that the Chairman asked a few moments ago about occasions when we took a view where we wouldn’t have the support of a blocking minority and then agreed to something unanimously? You rather judiciously used the word “unexpectedly” in the course of that. Can we be absolutely clear about that? Are there occasions when, where you have obtained a policy statement from an individual Whitehall Department on the UK’s position, you none the less decide to agree to something in Europe at Coreper level, because you are aware that you don’t have a blocking minority on your side, so it appears as though it has gone through unanimously?

Sir Jon Cunliffe: Not without instructions. We operate on instructions.

Q394 Mr Clappison: Very well. Do the instructions come back to do that? I appreciate entirely your position, but is that something that would be on instructions or not?

Sir Jon Cunliffe: Let me take you through a case on this. Some things are predictable and you can feel where they are going, but sometimes you are in a strong blocking minority and then one or two of your big members disappear. You can see that happening. It can occasionally happen in real time in a trilogue. At that point, you are faced with there being a qualified majority there anyway.

You can normally see it happening a day before, but it has happened to me once or twice actually in a meeting, when we have been discussing whether we can accept Parliament’s amendments or not. The first thing you say is, “I can’t agree to that. I have to consult.” You are asked how long you need; that depends on deadline. The advantage to being permanent on Committee is that we can meet as often as need be.

When we get to the end of a Presidency and the legislative timetable is getting squeezed because the Presidency wants to get things through, as many Presidencies do, and the Parliament is pushing, then we can be in session four days a week until early in the morning. You say, “I can’t agree to that. I have to consult my authorities.” That happens often and we are by no means the only ones who do it. Everybody does it. A compromise is offered. You know that you haven’t got blocking power. Do you take the compromise or not? How far do you take it? The answer is that you phone the Department and then on a very fast timetable a Minister is consulted and we get a line. Sometimes you can be surprised, but if we are doing our job the Department should know that this is the crunch meeting and they have to be able to deal with it. When we did a trilogue recently we were monitoring what was happening in the trilogue throughout the late evening, up until about one or two in the morning when it finished, and Ministers were consulted in that timetable. We will not— I will not, my deputy will not and nobody at the working group will— say, “I can see that we are now isolated and we have to say yes,” without that instruction from London.

Q395 Mr Clappison: I appreciate your explanation. But is the short answer to this that it does happen that we agree to something to which a Department was initially opposed because it is clear that we do not have a blocking minority?

Sir Jon Cunliffe: It never happens that we agree to that without authorisation.

Q396 Mr Clappison: Do we agree to things that we would prefer not to have had in order to have a piece of legislation that we think meets our objectives? Yes. But I have to say that the European Union is de facto
27, soon to be 28, Member States trying to reach a compromise on particular pieces of legislation—proposals—and it is very rare that we get everything that we want. But there are judgments to be made about what we can live with and what we cannot live with, and what we can support and cannot support. Those have to be made as the process goes along, and they are made.

Q 397 Mr Clappison: How often does it happen that we agree to something that we did not initially agree with because we cannot get a minority to block it? Does that happen only occasionally or quite often?

Sir Jon Cunliffe: Let me take an example of a large file—the file on market infrastructure. It has 600 or 700 clauses and is 2,000 pages long. There are things in there that we would not have chosen. There are things in there that we would not have chosen that we have decided we can accept; we initially opposed them being there, but in the end we accepted that something could be there. Very often, there is a compromise, but we looked at it as an overall instrument and said, “This is something that has enough of what we want and has a shape that we can accept.”

So there are many individual elements of legislation that we would not have put in but when we look at the overall proposal, the judgment is that the overall compromise—I am afraid it is virtually always a compromise because that is the nature of the European Union—is one we can accept, except in the cases where Ministers say “No, vote against” and we vote against.

Q 398 Chair: Sir Jon, there are occasions when it is not convenient or desirable in the national interest. When the original 1972 Act went through, it was based on a White Paper, which quite clearly stated that we had to retain the veto in our national interest otherwise it would not be in our national interests. It went on to say that to do otherwise would endanger the very fabric of the European Community itself.

The question is therefore very simple: given the current circumstances, the uncertainties, the complications and the cross-currents in the European Union, do you believe that there is a case for having a veto now as compared with arriving at the point that you just described—where the notion of compromise lies at the heart of the European Union? It certainly did not back when the 1972 Act went through.

Sir Jon Cunliffe: The question of what the policy should be on the European Union and whether it is right to have qualified majority voting is, if I may say so, a question for Ministers. It is obviously a really important issue and a question for Government policy.

It is an issue that I read about a lot in the newspapers. My job is to work within the system that exists, which is qualified majority for most but not all of the legislative proposals I deal with, and then unanimity for CFSP, CSDP and foreign policy; on JHA it is qualified majority but we have an opt-out. So I am dealing with a range of different universes but within each of those systems our job in UK Rep is to get the best deal for the UK and to come out with something that the UK thinks is a good piece of legislation and does not have things in it that we cannot accept, although it is a compromise.

Q 399 Chair: If I could just add to that: David Lidington has written to us and said that if matters arose out of our discussions with you, which were matters of broader policy—I am sure you know this—he will come and explain that. We as a Committee will perhaps want to take up that opportunity.

Chris Heaton-Harris: I think you have the next question, unless you want to ask another one, Michael?

Michael Connarty: That was an excellent and full response to the question. Thank you very much.

Q 400 Chris Heaton-Harris: I have a couple of questions. The first directly follows on from Mr Clappison’s question and the comments you made on trilogue negotiations. When trilogue negotiations are happening, we get these new versions of documents, which tend to carry the limited classification, which essentially means we cannot see them. How can we better scrutinise what is going on in a trilogue and how can we change the process so that we can have a better say in what goes on?

Sir Jon Cunliffe: I thought—we can check it and write to the Committee—we had an agreement that we can share limited documents with the Committee confidentially. I thought we were able to do that. If the Committee cannot see those documents, that clearly stops you from operating transparently in your normal way. I am not suggesting that that is an answer to the question, but in terms of the Committee and what is going on in this process, I thought we could do that. Maybe we can take that away. I need to check it.

Q 401 Chair: Could I give an example? Not many urgent questions have been granted by way of emergency application to the Minister. It was not in your time—I think it was probably a bit before you took over—but there was a situation where I was supplied at a COSAC meeting with a limited document of immense importance on the question of economic governance. It was quite clear that the Government did not want us to see it. It was equally clear that it was limited so that nobody would see it, and that included all the other national Parliaments. Because I had the document, I was able to take action.

I am interested to know whether you feel, in light of what Chris Heaton-Harris said, that the whole limited thing is a good idea. It seems to me that it is just an attempt to keep really important stuff back and thereby deprive the national Parliaments of an opportunity to know what is going on at the time they ought to know.

Sir Jon Cunliffe: There are instances where it is right and necessary for the European process to have confidentiality and confidential documents. I could not comment on the whole range of limited documents. For us, I think it is important that we share those with the Committee.

To round it out, the other way that we can keep the Committee informed in a negotiation around trilogues—sometimes they move quickly and sometimes they move slowly—is for Ministers to...
write before we go into the trilogue process about what they think will happen and to write when amendments come from the European Parliament that we have to respond to. Through that, the Committee would have an idea of what is happening in the flow of the negotiation. There will be times where it will move so quickly, because a Presidency and the Parliament will schedule three trilogues a week and the text will be going backwards and forwards, that it may not be possible to do that. We should aim to ensure that the Committee is updated on what we think will happen in the trilogue process.

Q402 Chair: You will understand that if I, as Chairman, am given a letter that says, “This is a letter that contains essential information about the Government of the United Kingdom through the European Communities Act 1972”, but am also told that it is so fundamentally secret that it should not be made available to the Committee or Parliament as a whole, that is something that I deeply resent. If it is going to happen on a short timetable and I am having pressure exerted on me, the legal advisers can get involved in that, because the question is whether we would be breaching some convention or quasi-rule of law or something like that by releasing this information. I feel that my first duty is to Parliament, not to the processes indulged in by the European system and the establishment over in Brussels. Do you understand that it can become quite serious?

Sir Jon Cunliffe: I understand the problem. We have to work within the limited system. The operation of the scrutiny system is for Parliament, not the Government, to determine. Within that—the policy on confidential documents and how the Committee can use them is one for the Minister—we can do what we can to ensure that the Committee is as informed as possible on fast-moving negotiations. We will try to find ways to share information.

Chair: I may be grateful for the indulgence of being given the opportunity to look at something, but if I deem it not to be in the national interest from the United Kingdom Parliament’s point of view, I hope that you would understand that there will be occasions when I do not think that I can provide, imply or even what the system may provide, my and the Committee’s first duty is to Parliament and not to a limited process that some of us do not much like.

Q403 Chris Heaton-Harris: In a former life as a Member of the European Parliament, I was involved in trilogues, and, invariably, when they speed up it is because a deal that might otherwise take six months can be done rather more quickly for some reason. I always used to vote against First Reading agreements in the European Parliament because I thought that they were a disaster. Quick law is bad law. I was never really involved in a trilogue that went from a slow to a fast pace, but I fear that the same happens because there is the chance of a deal. Lots of i’s are not dotted and t’s are not crossed and some fundamental politics may be missed out. With something like the REACH directive or something else big and meaty, such as the file that you mentioned in answer to Mr Clappison, where the general thrust of the file may be in the right direction for the United Kingdom, there may be lots of little nasty elements that could have been done with being ironed out.

Sir Jon Cunliffe: It is interesting that the Parliament at President level has tried to constrain the First Reading process—although not for that reason, but rather that there is a feeling that the Parliament as a whole is unaware of what is happening in committees and that committee chairs and rapporteurs in the European Parliament are given too much power. There has been a move back and some brakes and constraints have been put on the process over the past year.

It is certainly true, however, that the process on complicated files can move quickly. We try to ensure that there are technical trilogues that can go on after the political agreement is reached, where i’s and t’s can be dotted and crossed, but there will be occasions when big political issues are sorted out quite quickly and at the end of the process. Generally, we will try to exert a brake on the Presidency and on MEPs until the issues have been resolved, but that process is not one that the UK can determine.

Q404 Chair: Finally on this point, will you agree that, under our Standing Orders and our general duties to this Parliament, I, on behalf of the Committee, would regard the imposition of the word “limited” as not binding on our national Parliament?

Sir Jon Cunliffe: I think it is for Parliament to decide what it is bound by. That is not for the Civil Service.

Q405 Chair: So you say the buck stops with me.

Sir Jon Cunliffe: I think Parliament is sovereign—if I can put it that way. We are Civil Servants.

Q406 Chris Heaton-Harris: This is a very good time for me to come in with a question that was not on our sheet of questions to ask. Although you are an ambassador and of that ranking, you are the one ambassador we have—I guess you could say the UN ambassador might be in a similar situation—who makes a number of important decisions or advises very strongly on a number of important decisions taken by Ministers. Do you think there should be some pre-appointment scrutiny of candidates for your role in the future?

Sir Jon Cunliffe: First of all, I think a number of my ambassador colleagues would believe they also had important roles in that sense. I have to say that that is a policy question. It is 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.

Q407 Chair: A good and faithful servant.

Sir Jon Cunliffe: The constitutional position is that policy is for Ministers. My job, as a Civil Servant, is to deliver policy to the best of my ability. In the end, that is the system that we operate under at present.

Q408 Henry Smith: Notwithstanding that, do you feel that there are any documents that are unsuitable for pre-adoption scrutiny—I am thinking of
documents such as action plans and sanctions, for example—and if so, what is the best way to overcome that problem?

Sir John Cunliffe: There can be such occasions, and sanctions are a good example. First, one does not want to let the country or regime that the sanctions may be used against know what we are doing and where we are. Secondly, sanctions will often involve putting limits on and constraining financial assets, which can move very quickly, or trade, or, as in the Iran sanctions, insurance contracts and the like; there, one has to decide and then move publicly very quickly—you can’t have a gap in that sense, and that causes an operational difficulty.

There can be negotiations with third countries, where again you need to keep the negotiating hand confidential. Those issues exist. I noticed, when looking at the overrides, that a large number of them were in that kind of sanctions area. We have not found a good way to square the need for scrutiny with the operational need, where if it gets out that we are thinking about sanctioning an individual the money will be gone and in the wrong place the next day. I do not want an answer that I recognise the problem, but I do not have an answer. A gain—and we can come back to this in my answer on limité documents—we are able to share things with the Committee but then there has to be some form of confidential process. I accept the problem, but I do not have a good answer to it.

Q409 Michael Connarty: I have noticed over the years that sometimes we are told that certain things have to be done quickly, but then if you look, often a year or more later the policy taken has not been implemented in that time frame.

Sanctioning individuals is not easy. I certainly have a recollection of things that we were told had to be done and then the decision was taken, but when we looked at a report later on—I am thinking particularly in the area to do with the relationship with Governments—the actions proposed had not been pursued or had been pursued in such a way that you got the feeling that a decision was not necessarily crucial in time terms; it was more as if someone had been up to a bit of gamesmanship, and then it did not get implemented. That may be the EU administrative problem, and the formal decision had been something people saw as being necessary.

It is not always justified when arguments are made that we have to take a decision very quickly. We are often asked, under our Standing Orders, to accept that a decision will be made despite the fact that we do not think that scrutiny should be lifted. Are you aware of issues in your 16 months where decisions were taken on the basis that things had to be done quickly?

Sir John Cunliffe: I have not come across such a case. I do not doubt that there are such cases, although I hope that there are as few as possible. I would say that before we accepted a decision that put us in a decision of a scrutiny override or putting pressure on the Committee, we will push back and say, “Do you need to do this now?” In some cases of emergency action, if there is strong resistance you try to get a number of other Member States, because we are not the only Member State that has parliamentary scrutiny; every Member State has parliamentary scrutiny, and sometimes there will be a number of Member States that will push back on that.

From your description of the cases, it may well be that there is urgency to sign an agreement with a third country, so the EU-Brazil summit is going to happen, there is a particular agreement or an association agreement—it is deliverable, in the terminology for that summit meeting—and there is pressure to get it signed, but the pressure is all about the signature and not about the implementation. I am guessing. This issue is more pronounced in the foreign policy area than it is in the legislative process, and there are a number of reasons for that. One reason is that the legislative process is well bedded down. Everyone in Brussels understands it, and the Commission understands it. They may want to move more quickly, but people understand parliamentary scrutiny and reserves.

On the foreign policy side, we are dealing with the External Action Service. It is a relatively new institution, which is populated by people who were originally in the Council of the European Union or national diplomatic services, who will have been dealing with issues that did not have scrutiny and did not have this process. It is a post-Lisbon set of issues, and they are not used to operating in that way. It is an emergency, so if we do not lift our reserve, that is it; it cannot go ahead. That can put more pressure on. Then it has these timetables like meetings and so on, and things like sanctions.

I think, in that area, some of this is about bedding down. Scrutiny is new, and the area is new to the European Union post-Lisbon in this current form. The Minister for Europe has written to Baroness Ashton three times now making this point. I have made this point with her and her cabinet, and people do so regularly. We sense that it is getting a little bit better, but I do not have scientific evidence to prove that. I think that a kind of bedding-down and working-through process has to happen, but I accept that sometimes there is pressure to do something we do not follow up.

Q410 Chair: On the question, for example, of Mali, you may recall—it is not that long ago—that very considerable pressure was being exerted. I am not complaining; I am simply saying that there were communications that France, in particular, wanted to get this through. I had a lot of discussions about the process and I made it absolutely clear that whatever the perceived urgency might be, the reality was that if we regarded it as being a matter of importance legally or politically, we would recommend a debate, and that is exactly what happened in practice.

You will appreciate that, of course, had a green light been given at an earlier stage and had Mali gone wrong, the consequences would have been quite serious. For practical purposes, I am sure you appreciate that we do welcome views that may be expressed, but at the same time it is absolutely essential to say that whatever the scrutiny processes may be for other Member States—they may have them—the question is whether they are as refined and
as focused as ours are. Do you have any thoughts on that?

Sir Jon Cunliffe: We fully accept and understand that there are occasions when that happens and when, to go back to my earlier point, the processes just cannot be lined up. As to other Member States, I do not have scientific evidence for this, so it is an opinion, just observing what happens around the Corper table. I think we probably have the most developed and comprehensive document scrutiny system in the European Union. We are on live broadcast, so I will now get letters from my colleagues; but I am pretty sure, from talking to my colleagues. Our process is very comprehensive and a lot of things go for scrutiny that don’t go for scrutiny in other areas. It also operates through the period, whereas others clear scrutiny quite early, and then it is done. However, there are other countries for which it is equally important. On the mandate side there are the Scandinavian countries. It operates in a different way, but they are frequently putting down scrutiny reserves.

In Germany, as well, you see that an awful lot. The Netherlands would be another one. So we are not the only one, but I think our document scrutiny is probably as comprehensive and as detailed as any of the others. That would be my guess, but I have not carried out a study.

Q411 Chair: One last question on trilogues: you say the UK cannot influence the speed of trilogues, but can you describe how the UK tries to influence the contents and speed of the trilogue negotiations, and where you can see any room for improvement?

Sir Jon Cunliffe: We can influence the speed of trilogues, and one does that by building coalitions with others and by brute political force, because in the end the system is set to try and deliver a compromise that everyone can live with. It doesn’t always achieve that, and if you say “This is a real problem for us,” a Presidency will listen. Some Presidencies listen more than others, but there are a number of things we can do, and I can think of examples over my time where we have slowed down the start of the trilogue process, because we were not happy that we actually completed it in the Council, or we have asked for more time for consideration of amendments and so on. So I think Member States can affect the timetable, but we can’t in the end determine it. It is for the Presidency and the Parliament to do, but we can have quite an impact, depending on the issue and the alliance that we make. On your questions about whether we can determine the policy and what happens within the trilogue—

Q412 Chair: I think I am really more interested in whether or not you can see any room for improvement.

Sir Jon Cunliffe: Within the scrutiny process or the trilogue process?

Chair: The contents and speed of the trilogue.

Sir Jon Cunliffe: It is very dependent on the actual Presidency. I know it sounds a strange answer, but I think good Presidencies do it in a kind of organised way and bring the Council along. Other Presidencies find it more difficult, and then the process becomes a

much more difficult one for the Council to manage. My first point is, if you see changes in performance over the years it is often to do with the nature of the Presidency.

On the trilogue process itself, my sense is it is evolving. The European Parliament got new powers in the Lisbon Treaty. There has been a sense that it is flexing its muscles. On whether there is, in the end, an alternative, it is a co-decision process in which the Parliament and the Council are equal legislative partners—I think that is the phrase. So in the end, there has to be a process of negotiation between the Parliament and the Council, the two legislative partners, to determine the final shape of the legislation. While sometimes I think we and the Parliament could do that in a clearer way—I hope that as the Parliament and the Council develop it will become better—I don’t think we can avoid the actual process, because that is the essence of the co-decision process.

Q413 Chair: Just to wrap that one up, would you agree that, as far as the UK national Parliament is concerned, we would not repudiate the notion, as set out in the Barroso blueprint, that the European Parliament, and only it, is the Parliament for the European Union?

Sir Jon Cunliffe: I won’t take responsibility for the European Commission President on that. I understand the point, and as I said at the beginning, Parliament is sovereign. To capture the discussion that has happened around Parliaments and accountability, there is quite a strong sense in Brussels now about the involvement of national Parliaments and the need to involve them on a range of issues, particularly around the euro for those countries that are in the euro. I had not thought Barroso was saying that all these issues have to be determined by the European Parliament and only the European Parliament. I thought that there was a recognition that the involvement of national Parliaments in the work of the EU needs to be increased.

Chair: I think it is more a question of “grandmother’s footsteps”, but I am going to pass on to Jacob Rees-Mogg at this point.

Q414 Jacob Rees-Mogg: We are moving on to scrutiny in practice. Do you have any specific suggestions on how the House of Commons scrutiny process could be improved, which might contribute to our inquiry, both from what you are currently doing and from your previous role? Could you also discuss what you think scrutiny aims to achieve? Are we trying to ensure that policy is formed correctly or are we trying to change the policy as it is formed?

Sir Jon Cunliffe: It might be best to start with the last, general question and then move to the specific. My understanding is that parliamentary scrutiny has a number of functions. First of all, it is about transparency. It is about ensuring that Parliament knows the business that is going through the EU—it is becoming ever more complex with the different formats, and the volume has gone up, but it is important that that is there—and through Parliament, the public and the media. That is a key element of the scrutiny process. It is there to enable Parliament to
hold the Executive to account, which is one of Parliament’s constitutional functions so that you are able to say, “What is the Government’s position on this? What has happened?” and have a debate for Parliament to examine the Executive on what it has done and why, and to do that publicly as part of the parliamentary process.

It is also there to give the UK the benefit of a view that we can take into the discussions and the negotiations. I would include in scrutiny both House of Commons and House of Lords scrutiny, because the House of Lords does more in-depth scrutiny reports that are enormously influential in Brussels and on Government thinking. The same can be true of scrutiny in the Commons.

It follows from that—as I said, the scrutiny process is for Parliament to determine, not for the Government and certainly not for me—that there could be more scrutiny upstream. We have the Commission’s work programme, and it is a pretty difficult document to wrestle with. Much of it is aspiration rather than concrete plan and you never quite know what, but we have that document, which suggests areas of action where the UK intends to bring forward proposals. We write at the start of every Presidency saying what we think that Presidency’s priorities are, what is going to move and where they will put their effort and invest their capital.

Again, views from the Committee about things that matter, things that the Committee will be looking at very closely, or even areas where the Committee thinks the Government should be aware of the following issues or suggestions, are valuable. The earlier we do that, the more we can influence. As everyone knows, much of Europe is about influencing early on in the process rather than at the trilogue stage. In some policy areas, expertise from departmental Select Committees could be brought to bear. I know that this Committee can ask for a Select Committee’s opinion, and I know that you are doing so more often. I have also read the evidence of the Chair of the Liaison Committee when he appeared here, and he made some suggestions about how departmental Select Committees can become involved not so much in specific decisions about pieces of legislation—although they might want to—but in policy and the way it is going. In many areas of European Union business, the policy that has been developed in the EU is of a piece with what is happening in UK domestic policy.

Finally, I do not know whether it is possible to streamline, given the extent to which there are things on which we should perhaps be giving more information and matters on which we could be giving less. Some of this has been done—I think there has been some agreement on VAT derogations for other Member States, although I think the Committee has decided that that is not something that necessarily has political interest for the UK. There might be other areas in which we are investing resources in one part of the scrutiny process that could be better invested elsewhere.

Q 415 Jacob Rees-Mogg: I wonder whether Your Excellency thinks that good scrutiny can be helpful to you in negotiating for the UK and UKRep. Can you get a better result in your negotiations by saying, “This won’t work in the UK politically, because the House of Commons has said this”, or “This is something we should be pushing for, because it is being demanded”? Does that strengthen your hand to any extent? If there is good and early scrutiny, is that more useful to our position in Europe?

Sir Jon Cunliffe: I and my colleagues around the Coreper table are very aware of our domestic parliamentary and political milieu in which we operate. If I say in a Coreper discussion that we have a strong parliamentary view on something, that is listened to because people think it will affect the Government, which it will. If there is a parliamentary view on something, does it carry weight? I do not know whether it does. It might not determine the outcome. If we put a parliamentary opinion to the next stage. Detailed Lords reports are not much a part of the discourse. But a lot of my job is influencing upstream. That does not happen in Coreper, which is now very large. There will be 28 of us around the table—Croáia will soon be the 28th member—plus the Commission and so on. If we have a Coreper discussion that we have a report on a piece of legislation, is that a useful thing to do? I do not think so. It is a useful thing to do in the case of the Environment, Public Health and Food Safety Council. It is also there to give the UK the benefit of a view in their discussions with people in the Commission and in the Parliament. It is also there to give the UK the benefit of a view that we can take into the discussions and the negotiations. I would include in scrutiny both House of Commons and House of Lords scrutiny, because the House of Lords does more in-depth scrutiny reports that are enormously influential in Brussels and on Government thinking. The same can be true of scrutiny in the Commons.

Q 416 Michael Connarty: I have heard so often the comment about the wonderful work done by the Lords, which obviously substitutes European sub-committees for our Select Committees in influencing the Government. However, in terms of your work, I cannot really see how it fits in with Coreper. It might fit in with the Ministers’ brief, what goes in the Department and what the perspective is, but are you telling us that you basically read the documents from the Lords and give advice to Ministers based on them?

Sir Jon Cunliffe: No. We do read the documents, but Coreper discussions in the main deal with things at quite short range as they move through the machine to the next stage. Detailed Lords reports are not much a part of the discourse. But a lot of my job is influencing upstream. That does not happen in Coreper, which is now very large. There will be 28 of us around the table—Croáia will soon be the 28th member—plus the Commission and so on. If we have a Coreper discussion that we have a report on a piece of legislation, is that a useful thing to do? I do not think so. It is a useful thing to do in the case of the Environment, Public Health and Food Safety Council. It is also there to give the UK the benefit of a view in their discussions with people in the Commission and in the Parliament. It is also there to give the UK the benefit of a view that we can take into the discussions and the negotiations. I would include in scrutiny both House of Commons and House of Lords scrutiny, because the House of Lords does more in-depth scrutiny reports that are enormously influential in Brussels and on Government thinking. The same can be true of scrutiny in the Commons.

Part of my job is to be engaged with the Commission before we ever get to that process and to be engaged with the European Parliament, because it can commission own-initiative reports and then influence what the Commission does. Generally speaking, the House of Lords detailed reports, which serve a rather different function to House of Commons scrutiny, carry weight in Brussels, and they are often some of the clearest analysis of an issue that people in Brussels have, so they have a high reputation. Also, we get reports from the Commons or visits by Select Committees. I try to encourage Select Committees to come to Brussels and engage, because in their discussions with people in the Commission and in the Parliament, they will have an influence in a way that
Q417 Nia Griffith: May I come back to the Select Committees, Sir Jon? Obviously, we are aware of the problem and difficulty that very often, because of other priorities, they do not get to know about things and look at European issues sufficiently early to be able to influence Government or indeed the Commission. Although they enjoy it and learn a lot when they come out to see you, as the Welsh Affairs Committee did last year—your staff were extremely helpful and gave a lot of time to the Committee—there does not seem to be a mechanism by which, for example, your staff could perhaps come here and talk to the Committee, perhaps in a broad-brush way. Do you think that that would be useful? If so, how would you see that operating? Who would instigate that? Would you see things that you thought were worthy of bringing to the attention of the Committee, or would you expect some role here to indicate it to you?

Sir Jon Cunliffe: Select Committee visits to Brussels are enormously useful. I know it is an investment of time, but in some ways there is no substitute for being out there and talking to a range of people. You get a feel that you would not get from a briefing from us. But obviously there is a limit to what can be done. The parliamentary office in Brussels, with which we have quite strong links, has a role to play in signalling or pointing Select Committees to things that they might want to look at. We are very happy to assist Select Committees in informal briefings, but there is a caveat: the policy on these issues is not owned by Select Committees in informal briefings, but there is a limit to what can be done. The parliamentary office in Brussels, with which we have quite strong links, has a role to play in signalling or pointing Select Committees to things that they might want to look at. We are very happy to assist Select Committees in informal briefings, but there is a caveat: the policy on these issues is not owned by Departmental officials and UK Rep. We are the Brussels office of a number of Government Departments, so it is for those Departments as well, and they have European branches and European divisions.

Q418 Nia Griffith: Given that the Select Committees don’t do that, is there a role for this Committee to point out to those Select Committees that they ought to be doing something? Do you think that that should—

Sir Jon Cunliffe: Sorry—

Nia Griffith: No, no, you have answered my first question, which was whether you thought it was your role, and you are saying no, it is not your role. But the question then is whose role is it to alert those Select Committees and to perhaps bring your expertise to them? That is the question. How does it actually engage in the first place?

Sir Jon Cunliffe: This Committee does have a role. My understanding is that it has a mechanism for alerting and targeting. I did not want to suggest that we do not have a role; I just wanted to suggest that if Government have a role, we are the front end of Whitehall Departments.

Q419 Nia Griffith: So you are suggesting that we could recommend that a Select Committee invites somebody over to look at things?

Sir Jon Cunliffe: Yes, or that they ask for departmental officials and UK Rep to come and brief them on various issues.

Q420 Mr Clappison: Further to Mr Rees-Mogg’s question to you, do you feel able to express an opinion as to how parliamentary scrutiny of the final stages of the legislative process could be improved?

Sir Jon Cunliffe: In the final stages, it depends on the nature of the instrument and the process. In the ordinary legislative process, which is qualified majority co-decision—that is the bulk of legislation—the final process is around the general approach of the Council, the trilogues and then the first reading deal, because we are still, at the moment, in a world where most deals happen at first reading.

It goes back to the answers I gave earlier to Mr Heaton-Harris. We have to ensure, and Ministers and Departments have to ensure, that the Committee is kept up to date with fast-moving negotiations. That means that you need a partnership. I talked about a partnership between us, Departments and the Committee Clerks, and it is at that stage that you need it most of all. Once something has passed through negotiations with the Parliament and you are on to the formal adoption later on, effectively the policy has been set. That stage of the process is the final stage, but it is the penultimate stage where the scrutiny is most important.

Clearly, if things do not go through at first reading—if they go to second reading and conciliation—the process has got to be extended and repeated, because the stages are pretty similar. We just do it all again and then have the conciliation. I do not see a procedural way of dealing with that complicated interaction of the Council and the Parliament. I think you have to depend on people who are on the ball and who have relationships, and on information being able to flow in an easy and informal way between departmental case officers, scrutiny clerks and UK Rep to ensure that we manage to line the processes up.

Q421 Michael Connarty: On one occasion in Standing Committee—in debate, so it will be on record—the Minister said that he had managed to achieve amendments in the parliamentary process in the European Parliament by contacts made with Members of the European Parliament, who argued and
won amendments. That seems to me to be something that is missing now in the process. As I have always said, the power after Lisbon moved to the European Parliament and very much away from us. We do not spend enough time talking to our colleagues in the Parliament about what they could do once things come out of the Council process.

One Minister indicated that contact was made by the Government—either by Ministers or by officials of the Government—with MEPs to have things reinserted that were left out in the discussion, which I fully commend, because it gets us nearer to the position that the UK want. Is there any role for your office and the people whom you work with in this process, or was that Minister indicating a departmental contact or a political contact? Once something comes out of Council, it is not finished until the Parliament approves it.

Sir Jon Cunliffe: First of all—all Member States do this—we most certainly do work closely with British MEPs of all parties to try to ensure that we get to UK objectives. That starts long before the legislative process, because it is important which MEPs are appointed to be the rapporteurs, the scrutineers and the Chair, and it is important that we have UK MEPs engaged in the areas where British objectives are most important. We are engaged pretty constantly with our MEPs, particularly the ones working on legislation. Some of them are very well plugged into the departmental process.

The links happen in different ways. They can be direct links. I talk to MEPs about what is going through the Parliament. My desk officers in UK Rep do it; they work with MEPs to ensure that we get the right amendments in and stop the wrong amendments—there is a defensive and an offensive part to it. Ministers do it when they come out, and Departments do it. The relationship between UK Rep and MEPs, and departmental officials and MEPs is rather different to the relationship between Civil Servants and MPs. Here we operate through Ministers who are engaged in the process; but in the European Parliament, we do not have Ministers in the trilogue processes, so we have to act directly.

On the broader question, I have tried, since I have been there, to improve our links with the European Parliament more generally. I know there are many different, divided views about the European Parliament, what it does and what it should do, but the fact is that it has a large role as the co-legislator in the process, and we have to work with it and use it to secure the UK’s objectives. I have tried to encourage links between Westminster and key MEPs. That is another way in which Westminster can influence what happens in Brussels, so I encourage that.

Q422 Michael Connarty: I commend all of that, but I have the following question. Obviously, you are representing the Executive, the Government, and we are representing the Parliament, the legislature, but we don’t seem to have those mechanisms. Therefore, would it be a fair conclusion that we are not as effective in the post-Lisbon situation because we do not have more direct contact, parliamentarian to parliamentarian?

Sir Jon Cunliffe: I think that is right. MEPs do not work for the Executive—they are not whipped out of Westminster—and the European Parliament operates in a way that is very, very different to Westminster. MEPs decide for themselves whether they will listen to the Executive, or whether they will not. Some of them belong to political parties that reflect the parties in the Government; some of them don’t. They are quite individual and different, but they choose. However, my sense from the UK MEPs that I speak to is that many—is this a huge generalisation—want contact with Westminster. That is an avenue that bypasses the Executive completely, parliamentarian to parliamentarian. And I sense that is true not just of the UK MEPs: I think the non-UK MEPs welcome that as well. In my view, given their role in the process, the more contact they have, the better it is for the UK.

Q423 Chris Kelly: How often is this Committee’s work used by UK Rep in negotiations on specific proposals in Brussels? If it is, can you elaborate with examples?

Sir Jon Cunliffe: It is used, clearly, in all the instances where we say that we haven’t cleared scrutiny. I can give examples, but, as I say, I put reserves down about 60 to 70 times a year. It is used when you ask questions of Ministers or raise important points, and then it forms ministerial policy. I can think of an example where the Committee had subsidiarity concerns—concerns about what is called competence creep—which people in Brussels are very alive to. It is used when, for example, there are dossiers which have unanimity, and people want us to gloss that. I will say, “That will not get through the UK Parliament.”

I think that a lot of that influence comes from the Committee’s influence on Ministers through the questions you ask and the fact that, in many cases, proposals do not clear scrutiny, so the Minister knows that scrutiny is there. In the end, it is for the Executive to decide what it will do and to account for its decision. That is the system we operate.

There have been instances; I can think of one. We get into some detailed stuff. Marine fuels and their sulphur content were affected by a European instrument and there were very strong views in the Committee about subsidiarity and not going past a certain point, which were used in forming the discussion. I can think of a number of tax files around VAT and so on where the Committee’s position on competence and where that goes was put through. I can also think of areas where we will dispute the legal base issues; for example, which legal base is cited in a document. That sounds arcane but will often determine the kind of voting structure and so on. There we will challenge the legal services and so on in areas where the Committee has expressed views.

There are a number of ways. There is a prime way, apart from my saying it will be difficult to explain in Parliament, which people do accept. The UK Parliament’s had a bit of publicity in Brussels over the past year or so, and that has probably made it easier...
to explain. The prime way is through influencing the ministerial process where policy is set.

Q424 Chris Kelly: How would you assess the level of awareness in UK Rep about the work of this Committee? How have reasoned opinions in particular been used by UK Rep during your negotiations?

Sir Jon Cunliffe: Desk officers in UK Rep are very aware of the work of this Committee. They will know where something is in terms of scrutiny. If the Committee has asked questions or expressed opinions, they will take that into account in their negotiations. They will focus. I can think of an example around special representatives, where the Committee had specific concerns that we tried to reflect in the negotiation. I can think of some of the issues around the partial general approaches being used for some of the spending instruments that are under the new MFF, the seven-year budget, where we reflected that. It comes back to the question from Mr Rees-Mogg about the seven-year budget, where we reflected that. It came back to the question from Mr Rees-Mogg about how we can improve it. The earlier we know what the Committee's views are, the more they can influence.

Q425 Chris Kelly: How have our Reasoned Opinions been used during your negotiations?

Sir Jon Cunliffe: If we have the opinion, we can say what the opinion of Parliament is. If questions have been asked, we can say Parliament is interested in particular things. If scrutiny has not been cleared, or Ministers have written but there has not been an answer, frankly, we can't use it because we don't know what it is. The thing we can use is that we haven't cleared scrutiny.

I will give an example around some of the Horizon 2020 financing programmes for science. It is a peculiar process because all of these instruments are part of the seven-year MFF, but they are separate legal instruments. So they are going through the European Parliament, processed with the Council on the one hand, but everybody knows they can't be completed until the numbers and the big elements are dropped in from the MFF agreement.

I think there were a number of interchanges between BIS Ministers and the Committee, some of which had responses and some not. Where there were responses about things that the Committee was concerned about, we could take them into account. Because it was done by a series of partial general approaches, the final thing could not be done until the seven-year budget was done, but elements that did not involve those kinds of numbers could be done first. So, where we had concerns from the Committee, we were able to take them into account. In some cases, we had them. In some cases, I think the Ministers had written, but the Committee for one reason or another was not able to reply. In those cases, we clearly can't take them into account.

Q426 Chair: Would you get involved, for example, where our Committee or our pressure in the House of Commons has drawn attention to a blatant disregard of the rule of law in Europe? I could give you an example or two. On the EFSM, it was clear to our Committee—we made a report—that Article 122 was not an appropriate vehicle or a proper basis on which to bring it in. Madame Lagarde came out of a meeting, I think on 17 December 2011, and said—I am paraphrasing—"We violated all the rules, but we had to save the euro." That was reported on The Wall Street Journal and no one has ever disputed it. We had a similar situation where someone—I think it was you—had to write to challenge the legality of the fiscal compact. That was a warning shot, accompanied by a lot of discussion and debate in Parliament, prompted by this Committee, on the legality of going ahead with the legal instrument of the 27. A challenge was proposed, but nothing has been heard of it since. Incidentally, I would like you to give me an update on where that stands at the moment. There are other examples.

In terms of the analysis that we bring to bear on the legal base that you referred to, the question that concerns us is: what is the mechanism whereby you are able to draw attention to the other Member States—they may want to go ahead—that there is a serious legal problem, which not only is a judicial issue for the European Court of Justice, but becomes a political issue, because it shows a complete disregard for the rule of law? That issue appears to be something of a political nature. What do you think about all that?

Sir Jon Cunliffe: To take the example of the EFSM, we made it quite clear that we did not think that Article 122 was an appropriate base for that. The original EFSM was agreed under the previous Administration. The current Administration, partly because of Parliament's work, made it an objective to secure an agreement that Article 122 would not be used again for that purpose. The Prime Minister secured that in the Council conclusions in December 2010 and in the preamble and recitals to the Council decision authorising the simplified mechanism for a treaty change in Article 136. That was to allow the euro countries to have the ESM and was not a treaty change that affected us. A lot of effort was spent getting into the legal details of that, that when the new ESM was up and running, the Article 122 EFSM would not be used again. A lot of the effort that went into securing those changes over three or four months was based in part on Parliament’s views on the legality and generally on the political appropriateness of that. It makes quite a difference.

Q427 Michael Connarty: We take very seriously the question of Reasoned Opinions when we think that there may be subsidiarity or proportionality breaches. Are they treated any differently from just scrutiny? Do they override scrutiny reserves? There seems to be a much more serious matter. At the moment, there seems to be a trend towards increasing competence created by the Commission.

Sir Jon Cunliffe: I think they are taken more seriously in Brussels, particularly if there are a number of them. Once you get to one third—the magic number at the moment is nine—the Commissioner has to consider—

Q428 Michael Connarty: But many do not reach that percentage. I just wonder how that feeds into the
discussions you have with the other 26 Member States.

Sir Jon Cunliffe: It gives us a bit more of a powerful hand, because we can say that this is more than a scrutiny reserve; we actually have a Reasoned Opinion of the UK Parliament. Very often, we are arguing on issues of subsidiarity and how far to go in those processes. If that exists, it gives us, not a card to play, but an argument to make in the negotiations. In the end, it does not bite unless you can get to the nine. My sense is that the Commission watches quite carefully when you get more than one, to see what is happening. I think there is an interesting issue about how much coordination there is between Parliaments, because this is something where, again, it bypasses the Executive, so Parliaments can work together. We all waited to see what would happen when the trigger was reached for the first time, and interestingly enough, the Commission just withdrew the proposal, which suggests that there is more mileage in this as well. At the initial stages, before you reach the threshold, it gives us a card we can play.

Q429 Chair: I know that you will have to leave in five minutes, so I want to come to democratic legitimacy, which basically goes back to the Prime Minister’s Bloomberg speech. He said: “My fourth principle is democratic accountability: we need to have a bigger and more significant role for national Parliaments… It is national Parliaments which are and will remain the true source of real democratic legitimacy and accountability in the EU.”

You cannot get clearer than that. At the beginning, Sir Jon, you made it clear that as far as you are concerned, the assumption is that the United Kingdom Parliament is sovereign. That is the basis for our voluntary agreement to enter into the European Communities Act 1972, from which flows everything you do in your field and everything we do. But for the Act, the situation would be significantly different. Basically, the question that I would like to ask is this: What consultation has there been so far on the Rompuy EMU road map, coming to the June European Council? In the light of what you just said about the European Parliament, what implications do you feel the Bloomberg speech has had?

Finally, we did two reports on EMU before the October and December European Council. How and to what extent do you regard those reports as having an impact on the United Kingdom’s position at the two meetings? We still have an outstanding debate. We have demanded three hours on the Floor of the House regarding primacy, which arises out of all this. In a nutshell—maybe it is asking a lot in a short time—can you give us an indication of where you see the process moving in relation to the constitutional principles that lie behind it?

Sir Jon Cunliffe: My background is in economics, not constitutional law, so I may be a bit more general in my answer, if that is okay. As I said, this is a discussion which is now happening quite intensely in Brussels. The answer to where the Van Rompuy road map and the Barroso blueprint have got to in dealing with this issue is: not very far. Van Rompuy will present a progress report in May, but he will come back in June. My sense is that this whole set of issues, which involve some fairly fundamental questions, will be very live in the European parliamentary elections and the political campaigns around those, and will be an issue for the next Parliament and the next Commission rather than this one. It does not feel to me as if the energy is there, because the European Parliament will be in campaigning mode from January onwards, and the Commission is now coming to the end of its term.

In terms of a political cycle, I could be proved entirely wrong, but my assessment is that this is something for after the second half of 2014. I expect, however, that Barroso—he said he will do it—will put down his vision from the Commission for where the European Union should go at the end of his term, particularly in this area, probably in spring next year. I cannot see this moving structurally before that time. Within that, ideas are being floated on the European Parliament side. Some of them are about the accountability of the European Central Bank, particularly when it has its new supervisory hat on. When the ECB acts as the single supervisor for eurozone countries and those non-eurozone countries that decide to join, to where is it accountable? Is it accountable to national Parliaments? Some people have asked whether it should be accountable to a committee of eurozone members only, because if you are not in the euro, should you be on the committee that holds the ECB to account?

Similar questions have been raised about the Commission’s role in economic governance—the so-called semester. For non-euro countries, that role is exhortatory and advisory—it has no legal force or sanction. For euro countries, however, the Commission’s role does have legal force and sanction. Again, the question is to where the Commission is accountable. Is it to within the European structure or to national Parliaments? Some of the changes to economic governance made over the past two years—the so-called six-pack and the two-pack—have changed the balance between the supra-national level of the euro and the euro countries. As that goes forward and we start to operate it and it sinks in, you will see pressure from national Parliaments asking where the accountability is and from the European Parliament asking what the right structure is. You will see that grow, but I think it will come forward later.

As to the UK Parliament and our role under the European Communities Act 1972, the UK made a decision, through that Act, to be in the European Union. Obviously, there are mechanisms in the treaty for that to be reversed. The decision can be reversed in that sense. If the question is about that being threatened, however, I do not see anything in the Barroso blueprint that affects that position. Most of that blueprint and all the areas around the European Parliament and accountability is really a discussion about euro countries and what happens with the euro. We are not in the euro and we are not joining the single supervisory mechanism, so to some extent much of that discussion is separate to us. That said,
once the discussion is there, I think it will go broader than the euro, and the Prime Minister in his speech laid out, as did the Foreign Secretary in his Berlin speech, this view about accountability that will have to be tackled. There are issues in the UK political system and debate that will play into that. However, I see that as something that will happen in the second half of 2014 and probably not before.

Q430 Chair: The central question about the sovereignty of the UK Parliament remains on the table. The question is how they are going to reconcile that with all the machinations and manoeuvrings—political, constitutional and economic—that are going on in the framework of the European Union as a whole, with the eurozone problem thrown in. For practical purposes, I do not think that we can ask you any more this afternoon, but we are grateful to you for coming along and giving us a very interesting insight.

Sir Jon Cunliffe: I understand that the Committee is coming to Brussels at the beginning of next week.

Chair: Yes.

Sir Jon Cunliffe: I look forward to welcoming you then.

Chair: Thank you very much.
Wednesday 12 June 2013

Members present:
Mr William Cash (Chair)
Mr James Clappison
Michael Connarty
Julie Elliott
Kelvin Hopkins
Stephen Phillips
Jacob Rees-Mogg
Henry Smith

Examination of Witness

Witness: Professor Simon Hix, London School of Economics, gave evidence.

Chair: Professor Hix, thank you very much for coming again. Can I say first of all that we have been very interested in your VoteWatch? You may or may not know this, but we have been advocating its analysis by all the people we go and see—we have just come back from Lithuania, and we have mentioned it in the Netherlands—because we think that it is very important for people to know what actually happens. For that reason, I thought I would use this opportunity to mention it to you.

Professor Hix: Thank you.

Q431 Chair: First of all, could you give us your view as to how national Parliament scrutiny systems across Europe have kept up with the changes in the EU decision-making process since the Lisbon Treaty? I will give you some examples. There is the increasing significance of trilogues and First Reading deals, and the greater use of qualified majority voting means that national Parliaments, even if they are mandated, can still be outvoted. There are two questions.

Professor Hix: I read through a lot of the written and oral evidence that you have already heard. There is not a lot I would add to what you have already heard, but there are a few things I might highlight in response to that question.

It is my impression, although I have not seen very good recent research on this, that there is a growing variety of different methods Parliaments are using to scrutinise what their Governments are doing in the EU. At one extreme is what the Folketing is doing, using a system it started developing in the 1970s, but that was really put together in the 1980s. It has been said that the Danish permanent representative feels the Folketing breathing down its neck when it is in Brussels. I do not think there is another Parliament in Europe that can make that sort of claim. I would hope that at some point most of the permanent representation offices of the Governments in Brussels would feel maybe not breathing down their necks, but certainly constraints or pressures from national Scrutiny Committees. Some other Parliaments—the Dutch, the Irish and possibly some others that I am not aware of—have moved to scrutinise European legislation not just by a European Affairs or European Scrutiny Committee of some kind. The argument there is twofold. The first is volume. There is a lot of paperwork and documents to get through. The other argument is expertise. A European Scrutiny Committee is primarily an expert on European issues and, in fact, a lot of the technical issues on the table in regulation of the single market are sector-specific: if they are environment things, you would probably want input from environment experts. The Irish started to pioneer this during their Presidency with their Committees in the Dáil, the Dutch have been doing it for some time, and I expect that is a way that several others will be looking at.

You are right to point to the weaknesses of the aspiration that strengthening the scrutiny powers of national Parliaments over their national Governments is a way to close the so-called democratic deficit. One of the problems is that so many policy decisions in the legislative process are pushed back to First Reading trilogues; it is very difficult to get early information about what is going on. The European Parliament is in a similar situation, but under the new procedures for dealing with First Readings in the European Parliament, there is now a mini multi-stage procedure within First Reading, so the official role of Rapporteurs and shadow Rapporteurs is now represented. Parliament has a recognised delegation that goes and negotiates and reports back to the relevant Committee as part of the process of a lengthened First Reading. You are getting a mini co-decision within First Reading as part of the European Parliament’s way. I am not sure how much that helps national Parliaments, but it does suggest that Committees in the European Parliament would be a very good source of information for national Parliaments. Rather than seeing that national parliaments have a connection to the Governments in the Council, it would be more helpful if national Parliaments saw that they had a role of scrutinising the legislative process of the EU in general, of which one point is the Government in the Council, but the other point is the MEPs and what goes on in the European Parliament. I saw that was highlighted by several of the other people who have given evidence to you and the Committee.

On QMV, this has been a perennial problem. I do not see this as any more of a problem now than it was when the Single European Act was adopted. It is true that more decisions are de facto taken by QMV, but overwhelmingly decisions are still made by consensus in the shadow of QMV. What is clear from our VoteWatch data is that 90% of decisions are still made by unanimous decision-making. There are limits to what we can do in VoteWatch in that votes are not actually taken on a lot of issues; they are agreed by consensus and we just report them as “decision by consensus”, therefore unanimity. There is not yet a
culture in the Council of there being a formal position taken by a Government registered before a vote and then a vote being taken and that getting reported. The Council still think is an incredibly secretive institution. With VoteWatch, it is so much easier to track the European Parliament. Some of you are, understandably, sceptical of the European Parliament, but from our point of view as people interested in trying to provide information about what is actually going on in the legislative process, the European Parliament is streets ahead of the Council. The Council operates primarily very much as a diplomatic body, rather than seeing itself as a legislative body. I was in favour of separating out the Council to recognise a separate legislative Council. Economic and Monetary Union, Justice and Home Affairs, Common Foreign and Security Policy and Defence do a lot of executive-type business, but when the Council is operating as a legislature, let us recognise it as a legislature. Let us have everything out in the open, let us have all the documents and all the position papers of all the Governments. Let us see up front what coalitions are formed between what Governments. They have to share speaking time, for example. They have to co-sponsor amendments. Has this Government ever admitted to you who they co-sponsor amendments with? I doubt it. Why not? They have to do it. With 27 Member States and limited time, this is how they now organise the Council agenda, but we do not see any of that as citizens, and I think that is appalling.

Q432 Kelvin Hopkins: I agree with everything you have just said. Going back to parliamentary scrutiny, is it fair to say that it is easier for the Folketing to take a strong line because there is a pro-EU consensus in that legislature, for all sorts of reasons, one of them being PR, and that it is something of a paper tiger, whereas if we had that kind of hold over our Ministers, it would be a lot more difficult for them? Professor Hix: I do not think so, because for the 1980s and most of the 1990s, Danish public opinion was as sceptical as British public opinion. There has been a slight shift since. Denmark has become more pro-European. That is partly a result of various referendums and a much broader debate; it is partly a result of much more effective scrutiny by the national Parliament. Because of the nature of the EU legislative process, the scrutiny of what Ministers are doing on highly technical issues related to the regulation of the single market tends to be less about “us versus them” or more or less integration, and more about, “Is this the right thing to be doing? Or questions of subsidiarity. Or does this affect negatively particular economic interests of Denmark”—or in this case it would be Britain—“in the single market?” I am not convinced by the argument that it would be different for Britain because we have a more Eurosceptic public and a more Eurosceptic legislature.

Q433 Chair: Could I ask you, then, this question? Under qualified majority voting, as you quite rightly say—because we have seen your VoteWatch conclusions—pretty much everything goes through. It is becoming, from your statistical base, increasingly obvious that although France and Lithuania vote for everything, for practical purposes, we in the United Kingdom vote for 90%. Professor Hix: I have got the latest figures. It is a bit more than that. It is 96%. If you count abstentions, it is 86%.

Q434 Chair: For practical purposes, the proposals are put forward by the European Commission and, when they get to the Council of Ministers, although there has been a lot of discussion in the process of the analysis, including our European Scrutiny Committee engagement and debates and the rest of it, the reality is that 96%, you tell us now, go through? Professor Hix: I would not put it exactly like that, for the following reason. Votes that are observed and recorded are usually only ever taken right at the end to acknowledge the acceptance of something. It is not true that 90% of proposals that come from the Commission end up being law. That is not the case at all.

Q435 Chair: No. The framework of what is proposed goes through, as amended in the course of the process? Professor Hix: No.

Q436 Chair: Not that either? Professor Hix: No. It can get thrown out earlier by the European Parliament or it can get thrown out earlier by the Council. If there is disagreement between the two, what can sometimes happen is that it gets blocked and then it gets withdrawn by the Commission, or it just does not get adopted and it runs and runs and runs and nothing happens, or it gets watered down to something completely useless and then finally just gets adopted by the Parliament and the Council as something incredibly bland with not much consequence to it whatsoever. It is not quite the same as thinking about passing legislation through a national set of legislative institutions, where action gets proposed, gets adopted and gets implemented. There is a huge continuum at the European level, from things that never see the light of day because the Commission does not even bother proposing them to things that the Commission proposes and just get blocked and are eventually withdrawn—we have seen that with the family reunification directive, for example—to issues that get vetoed either by the Parliament or the Council and never see a vote, to issues that get so watered down that they are not worth the paper they are written on, to quote several Commissioners, and get adopted, but their consequences are minuscule. I would not infer too much from the number—that 90% of votes at the end of the day means 90% of significant things are getting adopted.

Q437 Chair: Do you not think, therefore, that it would be a good idea if VoteWatch addressed that question? Professor Hix: We would love to if we had the resources to. We just cannot.

Q438 Chair: That does leave a big question, does it not, in helping public opinion to know just exactly what does go through, what is amended and what is effectively rejected?
Chair: It may have been in an informal specific? something that is part and parcel of the process as a argument that they put forward effectively was, “This non-papers. I think it would be fair to say that the meeting, but we were discussing the question of I just do not buy it. Which bit Professor Hix: What is your view on that in this Sir Jon Cunliffe said? Have you had a chance to look at what Professor Hix: I would go even further and say, why just UK Government non-papers? This is the legislative process: why can you not see all of the non-papers in the Council? For the life of me, I do not understand why it is legal for these papers of our elected representatives, who are passing legislation, not to be public. The equivalent papers in a national Parliament, in the US Congress or in the European Parliament would be public.

Q 440 Jacob Rees-Mogg: What are the equivalent papers in a UK context—Green Papers? Professor Hix: It is a little bit different in the British context, because in the British context, once the Executive has made a proposal, it is then in the realm of Parliament. The analogy is closer to the US, or to the equivalent papers in the European Parliament. In my opinion, once the Commission has put out the door a draft directive or draft regulation, anything beyond that point that proposes amendments to it should be in the public domain, because these are legislative scrutiny documents. That is how it would be in Congress. That is how it is for anything the European Parliament produces as any report in a Committee or anything. That should be the equivalent standard for the Council. I do not understand why there is one standard for the European Parliament and one standard for the Council. The standards should be the same.

Q 441 Chair: Have you had a chance to look at what Sir Jon Cunliffe said? Professor Hix: Yes.

Q 442 Chair: What is your view on that in this context? Professor Hix: I just do not buy it. Which bit specifically?

Q 443 Chair: It may have been in an informal meeting, but we were discussing the question of non-papers. I think it would be fair to say that the argument that they put forward effectively was, “This is a diplomatic negotiating position. It is not really something that is part and parcel of the process as a whole. It is a position paper and there are things included in it that would not be the kinds of thing that would be helpful to have in the public domain at that stage because it is a position paper.” I think that would be a fair way to put it. Professor Hix: I am glad that you set it out like that, because I have heard that time and time again from Civil Servants of not just the British Government, but the other Governments in the Council. This is a problem. They operate very much as Civil Servants rather than as legislators. They are legislators. There is a big difference. What they are doing is not diplomatic negotiations between Governments. They think that is what they are doing, but I do not think that is what they are doing. I think what they are doing is amending law. There should be a clear distinction between when the permanent representatives are operating as diplomats and when the permanent representatives are operating as legislators. If they are operating as legislators, what they are doing in practice is setting out an opinion of a legislator—the British Government—as a negotiating position with other legislators. I do not understand why that should not be in the public domain.

Q 444 Chair: UKRep, for example, whose evidence we did have formally, has a function within the framework of the legislative system. The results of what it is they discuss and decide before they give the issue back to Ministers, who make the formal decision, are effectively seriously affecting the outcome. Therefore, you are saying that that is part of a legislative process, whether or not they like to call themselves diplomats in the Foreign Office?

Professor Hix: Their modus operandi is the same whether they are discussing common actions in Common Foreign and Security Policy or whether they are discussing Second Reading of a co-decision draft directive. Their modus operandi should be fundamentally different across those things. On the first, you can clearly say that these are executive actions between Governments that would be the realm of the executive branch of government and there is a good reason why you would want certain secrecy in diplomatic things behind closed doors. On the other, the modus operandi should be transparency. They are acting as elected representatives of the British people in a legislative process and therefore everything they do in that should be open to the public.

Q 445 Jacob Rees-Mogg: I want to get clearer precisely what these non-papers are doing to see why they should be public, which is why I was trying to tempt you into saying what they would be in the UK system. If you will forgive me trying to put words in your mouth, would you view them as being like amendments that are put down in the House of Commons to a Bill that has been presented and that therefore has churned its way through Whitehall and gone from the Government stage to the legislature and is being amended by the Members of the legislature? Is that a reasonable understanding?

Professor Hix: I think that is a reasonable understanding. I would put it slightly differently, though, because of the way the representation works in a multi-level and multi-Chamber system of government like the EU. It is more 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.

Q446 Jacob Rees-Mogg: Do you think it is possible that Governments want to keep them secret because the positions they take publicly about how strongly they are negotiating in Europe may be different from what they are actually saying in these non-papers?

Professor Hix: No, I do not think so. I think it is more to do with the fact that if some of the positions they are taking come out, the consequences would be uncertain and that could compromise them in their negotiations. One of the things I have heard said by Civil Servants in Brussels when challenged on these things in the Council is, “We would feel so much more constrained in our negotiations. We could not trade. We could not say, ‘I am willing to give in on this one if you are willing to give us that on that one’. We would not be able to do that trading across issues—‘we care about this issue more than that one; you care about this other issue’—that can help us come to an agreement.” That is a reasonable argument.

Q447 Mr Clappison: Do you think there is possibly an element that the Ministers do not want it to be known that they are not obtaining all that they set out to obtain and they are having to grant to other people things that they did not want to grant them, which could be construed as a defeat here and something that would upset public opinion?

Professor Hix: There is definitely truth to that, but it would be more helpful for the legitimacy of the EU if this was transparent and we learnt that you win some and you lose some and this is part of the process. We could stick all this up online, we could look at it, we could analyse it and we could see whether it is true that we lose more than other member states. We do not know that. Nobody knows that.

Q448 Mr Clappison: There is a question of doing what people vote for, is there not? The public might well be horrified to see this spectacle. Are you aware of what happened during the Constitutional Convention, for example? Our Government apparently moved amendments and lost many votes on constitutional amendments and then came back to the House of Commons and said, “We think this is marvellous,” even though they were defeated on it, without telling people that they had been defeated on it in the first place.

Professor Hix: MPs have to go home to their constituents and explain that they lost votes in the House of Commons.

Q449 Chair: That is not quite what happens, is it? For practical purposes, it is just a vast array of paperwork, which goes on the entire time. The point that James Clappison was making I very much agree with, which is that people vote for policies. When you have a general election, they vote for a particular person and/or party, which sets out a whole series of promises in a manifesto. In many cases, as you are putting it, a completely blind system is operating, because people do not know what these non-papers involve, even though you then move on to a new phase later when it becomes a public document and you have a scrutiny process and decisions are taken in the Council of Ministers. Even then, to come back to my question about the greater use of qualified majority voting, the reality is that for all the scrutiny processes in the world, they not only need to be improved, but the qualified majority vote, in many cases, in terms of policy and future legislation, given Section 2 of the European Communities Act, means that whatever a person has voted for at the ballot box will be overridden by the decision of other countries in this European Union because the decision that has been taken under the treaties is that every county has to abide by the majority vote where that is prescribed as the treaty base.

Professor Hix: If the Council of Ministers was the only legislative institution in a unicameral legislative system I would worry more about that. If there was a governing majority that governed against a minority across all issues I would worry even more about that. That is not the case. The way I understand and the way I teach the EU is that part of the decision to move to qualified majority voting in the Single European Act was logically counterbalanced by increasing the power of the European Parliament as a check. We have a bicameral legislative system in Brussels, and within that bicameral system, as in any bicameral system, coalitions are built across both institutions. It is very unlikely that you will have all the British MEPs losing in a vote and the UK Government on the losing side, and that is happening repeatedly across a wide range of areas. It just does not happen, with the British Government or anybody else. From a political theory point of view, the whole point of a bicameral system is that the people you vote for might be on the losing side in one institution, but on the winning side in the other institution.

Q450 Mr Clappison: Surely the purpose of casting a vote is to elect a Government that carries out the policies in its manifesto.

Professor Hix: You do not elect a Government; you vote for your MP. Your MP might not be in the Government. I disagree with that completely. You might think that is what the British electoral system does, but I can tell you it does not.

Q451 Mr Clappison: If people continually vote for something and they are told, “We have a majority. We can achieve this,” and then the Government has to come back and say, “No, we could not get it,” they might think, “What is the purpose of voting at all?”

Professor Hix: Would you not say that in any constituency if people elect somebody from a party that is going to be continually on the Back Benches and never in government, you would say, “Why bother voting?”
Q 452 Mr Clappison: You can change the Government through your vote. You cannot change anything through this.

Professor Hix: You cannot change the Government through your vote; you are just electing an MP in a single constituency. It is a very odd way of thinking about how democratic politics works to think that what we are doing all the time when we are voting is electing Governments. We do not elect Governments in Britain; we elect MPs.

Q 453 Kelvin Hopkins: I slightly strongly disagree. One of the reasons I so strongly support the first-past-the-post system is that, in effect, we can choose between Governments. If a Government becomes unpopular, effectively the opposition party can become the Government. With PR systems you do not get that; you get different patterns of allegiances and coalitions, and sometimes you get a quite big shift in opinion and you do not see a change in Government because of the centre-left and centre-right combine yet again to do things.

Professor Hix: We can get into a whole discussion about electoral systems and I can tell you my views about the British electoral system if you like, but that is probably not what we should be talking about today.

Q 454 Kelvin Hopkins: Yes. My question is really this. The Bagehot principle operates in politics wherever we are: there is an effective part of the constitution and a decorative part. What happened under New Labour was that the Cabinet became part of the decorative part—in Bagehot's time it was the effective part—and the effective part became the sofa in Tony Blair's drawing room. That is where things were decided. It strikes me that two things are crucial: where these decisions are really made and who is involved in making those decisions. If all the Sherpas, the UK Rep officials and whatever are all of a mind to push a thing forward, it will happen in a particular way. Having people who are prepared to stand out against the European Union, the Commission or whatever is very different. I met a previous head of UK Rep, now long since gone, and asked what would happen in such a case. It was quite clear he was a very strong pro-EU official, who saw opposition to and scepticism of the European Union as just a hurdle he had to overcome and something he had to deal with—a pain, if you like. He was really pro-EU. It is those two things. Where are the decisions really made? What is the nature of the people who make them?

Professor Hix: I am very strongly supportive of the European Union, but equally very critical of the way it works as a semi- or non-democratic institution. It has lots of checks and balances, so it is very difficult for the EU to do anything unless there is a very broad consensus across Governments, across different political parties and across multiple institutions, with the checks at the end of the day being the national courts and the European Court of Justice. It is a system of über checks and balances. It is diametrically opposed to the dictatorship of the Government we have in the United Kingdom. It is at the other end of a continuum, way beyond the United States in terms of a Hamiltonian/Madisonian system of government. Having said that, it is not clear who is responsible for what. It is not clear what coalitions governed on what issues, what the majority was on what issues, or who were the winners and losers. That is what I think is essential for us to be able to see as parliamentarians, from your point of view, and also as citizens.

Q 455 Mr Clappison: To what extent do you think the scrutiny reserve affects the behaviour of UK Ministers in Brussels? What can we do to try to maximise this area of our influence?

Professor Hix: I do not think it affects them very much at all, as compared to other Parliaments—the Danes, for example, at the extreme I discussed earlier. I do not see why, if you request documents, the Government would not feel that it had to give them to you. Are there not judicial proceedings that should require them to provide these under Freedom of Information? What is the argument they have against the provision of these early documents, or non-papers—not just their own non-papers? My understanding is that during the Finnish Presidency of the Council a few years ago, under Finnish freedom of information laws, they put every working document of the Council on their website. The other member states complained until the Finnish Government agreed that they would only do it in Finnish, so then their own Eduskunta could read everybody's documents going through the Council, but nobody else could because nobody could read Finnish. That did not cause a complete breakdown in the legislative process during the Finnish Presidency of the EU, so I do not believe that providing much wider access to publics, the media and parliamentary Scrutiny Committees would necessarily lead to a breakdown in the process.

Q 456 Kelvin Hopkins: More generally, I just want to ask a fairly open question. What do you think are the particular strengths and weaknesses of the House of Commons scrutiny system? There are, for example, our Committee, debates in European Committees, policy discussions that take place in departmental Select Committees and debates on key matters on the Floor of the House. They are the four sub-sections of my question.

Professor Hix: There are two different challenges. One challenge is scrutiny of legislation. The EU as a legislative system is only one part of what is happening right now in the EU. The way I think of the EU now, one set of things that our Government does in Brussels relates to the regulation of the single market, primarily through legislation and primarily through the co-decision procedure. Gradually, mechanisms are being put in place to prise open what the Governments are doing, and I think the Committee here is getting much more effective at doing that. I think it would be more effective if it could bring in expertise from some of the other Committees, particularly on policy issues. It could be more effective if you thought creatively about how you could use the expertise of a relevant Committee in the European Parliament, dealing with the Rapporteurs or the shadow Rapporteurs on the legislation. Why could you not have a systematic connection with the relevant British MEPs on the relevant Committee in the European Parliament dealing with the legislation? I do not see why your connection should purely be through the Government. The role of national Parliaments is to scrutinise the legislative process as
a whole, not just the connection to Government. That would be some way of doing that. The other challenge is what else is going on in Brussels. What is happening in the EU is increasingly not legislation, but the building of deeper economic and monetary union in the Eurozone plus prospective Eurozone states. This is a big challenge for not just the British Government, but for this Committee, in thinking about what the implications are of that for Britain’s position in the single market and generally for Britain’s role in the legislative process. I do worry about this issue of QM5, referred to this. I am sympathetic to what Lord Lawson wrote. With deeper integration within the Eurozone plus the prospective Eurozone states, I would expect that part of what will happen is we will see Britain on the losing side more systematically on key issues in the single market that affect Britain’s interests.

Q 457 Chair: Some of us, if I may say, have been saying this for about 20 years, but that is another story. Professor Hix: Yes, but I think that raises issues. It was interesting to read the Foreign Affairs Committee report yesterday. I wrote a piece this morning on the LSE website, saying that I think Britain should be asking for clearer guarantees of safeguards of its interests in the single market. I would be in favour, for example, of a new Luxembourg Compromise of some type that says that they will endeavour to reach unanimity on any question that is of vital interest to any member state whose interest in the single market would be affected by deeper integration, as one of the minimum conditions—or red lines, if you like. I think it is going to be much more difficult for you as a Committee to scrutinise those types of development.

Q 458 Kelvin Hopkins: We do have our Clerk advisers, who do a superb job of providing papers— you have seen these papers—every week. They reflect a very professional approach and the sorts of thing we want to be told. This is the report you are talking about. When the Foreign Affairs Committee discusses economic matters, it should really be with the Treasury Select Committee, one suspects, but that is another matter. Would it not be a mistake if we depended upon advisers from other Committees, rather than our own Clerk advisers who are responsible for preparing those reports? Professor Hix: I do not think it would necessarily be a mistake. Correct me if I am wrong, but I do wonder whether or not, on some technical issues related to regulation of financial services, regulation of services of general interest in the single market or environmental regulation, advisers from other Committees in the Commons might have more specialist expertise that could be useful to you. That is all I am saying.

Q 459 Julie Elliott: Is the scrutiny of Commission communications, Green Papers and White Papers truly upstream scrutiny? Is this already too late to influence thinking? How effective can scrutiny of these papers be in the monetary union in the Eurozone? How do you think this has changed fundamentally as a result of any of these documents or reports. All national Parliaments are facing similar sorts of challenge. You are right in that most of these proposals are very vague in details and what they are proposing does not really get to the heart of the matter in terms of helping national Parliaments be able to put pressure on not just their Governments, but also the legislative process as a whole. You see so often, “The solution is to involve national Parliaments,” or, “We want national Parliaments to be involved earlier in the process,” or, “We will provide documents to national Parliaments,” or, “The Commission will send its reports to national Parliaments,” or, “National Parliaments will be provided with access to documents.” This is all cheap talk.

Q 460 Henry Smith: Professor Hix, do you think that more could be made of the Commission work programme to provide a framework for a more coherent scrutiny process? In addition to that, how do you think we can resolve this problem of generality, which you were alluding to a few moments ago? Professor Hix: The annual work programme has gone through different cycles. It was more clearly used by Delors and has been less used by Commissioners since him. I can imagine that if there are rival candidates for the Commission Presidency next spring and in choosing the 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. The work programme would fit into a broader strategy of a particular Commission, which was the case under Delors: “Here is the broader strategy of a particular Commission, which is the case under Delors: “Here is the broader strategy of a particular Commission, which is a much blander document. The Commission negotiates what it puts in the work programme, as I see it, is a much blander document. The Commission negotiates what it puts in the work programme in co-operation with key Governments and in co-operation with what it thinks it can get through the European Parliament. It also cherry-picks a few own initiative reports from the European Parliament to the Commission. The European Parliament will do not think it is particularly useful as a document right now, but I think it has the potential to evolve into that.

Q 461 Stephen Phillips: On a related note, if we look at international trade agreements, which the Committee has also examined, the only depository document comes right at the end: the draft decision to sign. We are told that everything before that—the negotiating mandates and the revisions—are simply too confidential to deposit for the purposes of scrutiny. Can you think of a way around that in the particular context of these international trade agreements concluded by the EU, other than our simply relying upon ministers and will to keep us informed of the things that they think they can tell us? Professor Hix: I have had a similar conversation with Klaus Welle, the Secretary-General of the European Parliament, who has been making the same sorts of argument in Brussels. The European Parliament is
now asked under international treaties to ratify only at the end of the day. How can they have any influence over this if they are just given a “take it or leave it” document negotiated already by the Commission, some key Governments, the Council and the bilateral negotiating partner? They are thinking about how they use their powers of calling officials before Committees and trilogue meetings to try to influence the positions in the negotiations. In fact, the European Parliament has gone already to Washington to speak to the Senate Committees about how the two legislatures—the Senate and the European Parliament—will deal with EU-US free trade negotiations. They will speak directly to each other as legislative institutions to try to put things on the table or resolve certain conflicts at the legislative level, rather than leaving it purely to the Executives. You might ask how that helps you. Again, I would say that I would not just rely on the British Government to be able to provide you with this sort of access and information; there are other actors in EU institutions—namely, the European Parliament and the British MEPs in the European Parliament—who may be more willing to share information with you about the state of things going on in Brussels than the people in the British M inches here.

Q 462 Stephen Phillips: The function of this Committee is to scrutinise European matters, to report on them to our colleagues, to ensure proper debate and then to release them from scrutiny where appropriate. Having contact with European parliamentarians is not going to assist us in doing that.

Professor Hix: Why do you think that?

Q 463 Stephen Phillips: They are not going to see, are they, the negotiating mandates and the revisions to them at any time before we do? Those are the documents that we need to see if we are going to effectively scrutinise and influence EU trade negotiations at a much earlier stage.

Professor Hix: The Rapporteurs and the shadow Rapporteurs in the Trade Committee in the European Parliament will see those documents before you will.

Q 464 Stephen Phillips: But they will not be able to tell us anything about them. Would that be right?

Professor Hix: I do not know.

Q 465 Chair: Is it not also true in the context of these EU free trade agreements, on which we have had a legal analysis—we will be considering this further—that the exclusive competence of the European Commission on the one hand and of the qualified majority voting system and the Committee that is already in process to look at these things will in itself determine the whole future of the trade arrangements between the EU and the US, Japan—the list is endless?

Professor Hix: It is already the case with EU-Korea.

Chair: And Peru. Do not worry; we have been looking at this. At the moment, it is at a minimalist stage, but it is moving into the big territory now, with India to come. In the light of what Stephen Phillips was saying and the questions he was asking about the extent to which we would be in a position on behalf of our national Parliament, by questioning our national Government, to identify whether these trade deals are in the interests of the British people, which is our main concern—it may not be yours, but it is ours—

Professor Hix: Ouch!

Chair: No, I am simply putting it to you that you think that, by discussing this with the European Parliament, we are more likely to arrive at an answer that would be—

Professor Hix: No, what I am saying is that you would have the same sorts of challenge if Britain was negotiating free trade agreements outside the EU—for example, a bilateral UK-US free trade agreement done by the Ministries here negotiating directly with the US Government and insisting it has got to be fast-tracked and put as a “take it or leave it” to the Senate and the same thing has got to happen with the House of Commons. I am not sure that would be so different, on the one side. On the other side, I see citizens, Parliaments and elected representatives of the people across Europe as not necessarily being in competition with each other. They have similar interests in common: to find out what is going on, to have information and to have the Executive provide access so that these things are more transparent and so that Parliaments can consider whether or not they are in the interests of the people they represent.

Q 466 Chair: I was not trying to be rude to you at all, but can I simply say that the objectives of those in the European Parliament and those in the European Union as a whole are geared towards arrangements that are said to be of benefit to the European Union and, by definition, if it is an exclusive competence, it is to exclude the specific interests of a particular member state? We happen to have the job, as Stephen has said, of looking at it from the point of view of the national interest. I follows, does it not, that if we were to engage in the process that you were inviting us to, which was a dialogue with the European Parliament over this, then it is possible that we would end up having a discussion that would take us away from our role as national parliamentarians looking at the interests of British trade and British interests?

Professor Hix: Not necessarily, if they are British MEPs. British MEPs are elected by the same people you are elected by—the British people—and are elected to represent the interests of the British people in the European Parliament. Even if it was not the British MEPs and it was the other MEPs, it would be up to you to take a view whether or not the way certain negotiations were going was against the interests of the British people. Getting access to that information about what is happening inside the negotiations is a collective interest.

Q 467 Chair: You did mention the qualified majority voting point, and the question of qualified majority voting is embedded in the arrangements for the EU free trade agreements. Therefore, by definition, there is every reason to suppose that we would be unsure as to how the outcome of those negotiations would take place. Would you agree with that?

Professor Hix: I would agree with that.

Q 468 Chair: What do you think the Prime Minister meant when he was talking about a “bigger and more significant role for national parliaments”?

Professor Hix: It is a very easy thing to say. I cannot speak for him, but my reading of that speech is that
he meant national Parliaments playing a more active role in engaging with the whole decision-making process of the EU. That is not just scrutinising legislation; that is the European Parliaments much more actively involved in debating the future direction of the European Union and helping to influence the positions that Governments take over the future direction of the European Union. Particularly in the next few years, we are going to see, I would guess, a new IGC and a new set of treaty negotiations, probably starting in 2015 and concluding, perhaps, in 2017—perhaps after that—and a lot will be on the table. In national Parliaments, there have always been hearings and reports written on these issues. I recall this Committee writing a very robust report on the Maastricht Treaty negotiations. The national Parliaments taking a role in fostering and promoting a wider public debate about those issues is what I would hope the Prime Minister was envisaging. I am not sure how that would come about.

Q469 Chair: What implications could his statement have for the role of the European Parliament?
Professor Hix: Only positive. I do not at all buy the idea that there is competition between the European Parliament and national Parliaments. This was a very popular belief in the UK in the 1980s, that it is a sort of scale: if we increase the power of the European Parliament, we are inevitably reducing the power of national Parliaments. I do not see that at all. It is in the interests of the European Parliament for there to be much broader understanding, debate and discussion about the EU—the direction of the EU, what the EU does and how it works—by elected representatives. Whether those are elected MPs in the House of Commons or elected MEPs is for me neither here nor there. The European Parliament will inevitably benefit from national Parliaments taking a more active and stronger engagement role in EU politics.

Q470 Chair: Are you not aware of the attitude of most of the Members of the European Parliament in terms of their manifestoes? They—and the European political parties in different countries who advocate this, which is an issue that is under consideration at the moment—are all aimed at a different objective, which is most emphatically to move towards a greater and more integrated European Union rather than to put the focus on national Parliaments.
Professor Hix: Why is strengthening the power of national Parliaments contradictory with a deeper European Union?

Q471 Chair: You are arguing that the role of the national parliamentarian, by inference, is somehow distorted by the attitude of the individual national parliamentary process? Is that what you are saying?
Professor Hix: No. I will give a concrete example of this, which is the debate about the design of the banking union and the design of the scrutiny of the supervisory mechanisms and the supervision of the ECB. This is where the European Parliament Committee had a very clear position, which was that there is a limit to how much national Parliaments can play a direct role in this, because this is being done by the ECB and by a Committee of national representatives sitting in a supervisory arrangement in Frankfurt. It is appropriate that national Parliaments are informed and take an active role in this, but there is a limit to how much they can have direct scrutiny over the collective decisions of this body that is being built. It is appropriate the European Parliament should have an active role in doing that. You cannot just rely on national Parliaments to do that alone. I do not see that necessarily as being anti-national Parliaments. It is an empirical recognition of the physical abilities of national Parliaments to hold institutions like the European Central Bank or the European Commission to account. As you keep saying, you can hold your national Government to account. You cannot hold the German Government to account, you cannot hold the ECB to account and you cannot hold the Commission to account. I do not see it being a conflict of interest between national Parliaments, their role and the type of people and processes that they feel they would like to hold to account, and the European Parliament and the type of processes and people would they like to hold to account.

Q472 Chair: Are you arguing this from the point of view of the treaties, which prescribe the arrangements for the European Union as a whole, or are you saying that in the modern world, in your opinion, the fact that the European Parliament has certain powers is a legal question, but, in practice, it is much more efficacious to have a more generalised regional approach to decision-making, including the legislative process?
Professor Hix: The treaties themselves are incomplete documents. They are incomplete contracts, like any constitution or set of rules of the game. A lot of the details of how exactly scrutiny mechanisms work out are filled in. You can see this with how First Reading and the trilogues have developed. These are not part of the treaties. There is nothing in the article on the co-decision procedure that says, “You are going to have these First Reading trilogues.” A lot of this is filled in by the practical way it gets played by national Parliaments and by the European Parliament. That is inevitably the case. Treaties cannot possibly write down everything, although they do a lot. It is a good thing that EU treaties are very long and detailed, because there is a lot that they regulate and define very clearly. If they were much vaguer and shorter, there would be a lot more room for people to make things up as they go along.

Q473 Stephen Phillips: While we are on the subject of democratic accountability, can I ask you a very discrete question? Should the head of UKRep be subject to, pre-appointment hearings before this Committee?
Professor Hix: I would not see a problem with that. I do not know whether that would be contradictory with existing practices or processes from the UK Parliament’s perspective, but in terms of my own view of how I think accountability mechanisms work, I think that would be entirely appropriate.

Q474 Stephen Phillips: The advantage you identify is accountability. Can you see any disadvantages?
Professor Hix: I cannot see any.

Q475 Kelvin Hopkins: I have taken part in three pre-appointment hearings—very interesting they are too. It is quite obvious that Downing Street at a point...
was very nervous about even these far less—Do you not think that the Foreign Office would go hairless at the thought that we should have a role in appointing the head of UKRep rather than have them—

Professor Hix: They probably would. 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.

Q476 Chair: Going back to Stephen Phillips’s original question, your answer is perhaps getting a little more emphatic. You seem to be more or less saying that because of the legislative nature of this process he really should have a pre-appointment hearing, because if they are going to do it for Washington and the rest, then it follows that this has a special quality to it. Is that putting the position more clearly?

Professor Hix: If you have pre-appointment hearings to the other key diplomatic posts in the Foreign Office, there is no argument against it, but there would be an even stronger argument in favour of it, which is exactly the one you have just outlined.

Q477 Mr Clappison: I take it that you are not entirely happy with the current level of debate about Europe, because you say in the introduction to the 2012 VoteWatch Europe Annual Report that you look forward to promoting “better debates and greater transparency in EU politics”. How do you think that could be done?

Professor Hix: In lots of different ways. One of the ways is providing more information about what happens in the decision-making process, which is what we are trying to do with VoteWatch. Here is where the European Parliament elections have been tragic in their failure. If you read what the commentators were saying in the late 1970s, there was this big expectation that there would be a democratic moment for Europe, with elections all across Europe. Of course they failed. Trying to think creatively about providing arenas through which citizens and the media can engage with European issues would be a way to do it, whether that is set-piece debates in national Parliaments or public hearings that are more open to more direct public engagement. I am in favour of these rival candidates for Commission President. It is not the solution, but if there starts to be coverage in national newspapers of who these people are and what they stand for, maybe profiling in the media of whether we love them or hate them, and a background story, and if they make statements that will be described as “manifestos” about what they want to do for Europe, this at least will open up the possibility of more citizens across Europe knowing who this person is when they become Commission President and vaguely what they stand for. The EU was far more accountable when Jacques Delors was Commission President, whether we loved him or not.

Chair: Thank you very much indeed, Professor Hix. We have already had one set of evidence from you and now we can mull over the second. Thank you very much.
Thursday 4 July 2013

Witnesses: Rt Hon Mr 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, gave evidence.

Q478 Chair: Minister, I welcome you to the Thatcher Room. Thank you very much for coming in. We are going to start with the role of national parliaments and the purpose of scrutiny. Both you and the Foreign Secretary in recent speeches have referred to measures that could form a “bigger and more significant role for national parliaments” in the EU, which was envisaged in the Prime Minister’s Bloomberg speech and is also of great interest to those in COSAC. We have recently had a debate in Dublin about the whole question of democratic legitimacy. One of these is the so-called red card, as the Foreign Secretary put it, which considered giving “national parliaments the right to block legislation that need not be agreed at the European level”. Could you tell us why you think the red card is necessary?

Mr Lidington: Our starting point is a political analysis of the extent of the democratic deficit and the rising levels of public discontent with the EU and its decision-making process that we see not just in the United Kingdom but in many different EU member countries. The Prime Minister and Foreign Secretary thought this was a subject that was clearly relevant to the debate about Europe here, but that also was important for the democratic health of the European Union as a whole. We decided that we wanted to try to shape a debate about the right instruments to try to remedy that lack of accountability.

There is a school of thought, strongly represented in the European Parliament and Brussels institutions, that holds that, while our analysis is accurate in some respects, the way to remedy that is to enhance further the powers of the European Parliament to take measures, for example by making the President of the Commission an office holder directly elected across Europe on the basis of candidates put forward by transnational political parties.

We disagree with that analysis. We think that the last four treaties have given extra powers to the European Parliament, and we do not believe the evidence suggests that has worked in adding to public confidence but that the opposite is true. It is this Government’s view that the right way forward is to find ways to strengthen the role of national parliaments in holding the EU decision-makers to account and providing additional checks and balances to place at the disposal of national parliaments. We have within the Lisbon treaty the yellow card procedure. The Foreign Secretary’s Königswinter speech, and mine to the WDR Europaforum in Berlin, suggested ways in which the Lisbon arrangements might be further strengthened.

Even before we get to the red card, there is a question about whether the yellow card procedure could be strengthened by looking again at the threshold and the scope of the yellow card process, which at the moment is limited to subsidiarity grounds but could be made wider to cover proportionality, disproportionate cost, the time given to national parliaments to put forward a Reasoned Opinion, or other grounds. But 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.

Q479 Chair: Ultimately, in all the things you have described—the Barroso blueprint and various documentation—the pressures for more and more integration are clear. If you remember, Viviane Reding, who wrote an article in the Wall Street Journal and gave a speech via video to the Dublin conference of COSAC last week, called specifically for a federation. There is no question about the direction, which, in a nutshell, is political union. If we encapsulate the whole thing in the question of how the United Kingdom responds to the pressure being exerted for a political union, which is at the heart of a lot of that thinking, the movement towards a two-tier Europe and all those sorts of things, in that context it is very interesting to hear your comments on the notion of a veto. What would the right to block legislation mean in practice? Can you perhaps flesh that out?

Mr Lidington: My understanding is that this was an idea discussed during the convention on the abortive EU constitutional treaty a few years ago. Currently, if the Commission comes forward with a proposal, it is open to national parliaments to submit a Reasoned Opinion that results in the yellow card being triggered. In practice, if this scheme were brought into the treaties, exactly the same, or a similar process would apply, but with the power to require the Commission to remove that entire proposal from the table.
Q480 Chair: The 1972 Act was based on the White Paper of 1971. What you have said in your opening remarks almost exactly mirrors the wording of that White Paper, which was that it was in our vital national interests to retain the veto, and that to do otherwise would endanger the very fabric of the European Community. I think I have got the wording right. You said just now that the context in which a veto took place would be to ensure that, where interests were vitally affected, there would be a case for exercising the veto.

Mr Lidington: I do not want to misled the Committee. There is an argument to be had about the right of a Member State to exercise the veto. The truth is that, for reasons we know, successive treaty changes have enormously enlarged the scope of qualified majority voting rather than unanimity. I do not want to mislead the Committee on this point. 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 under which a given number of national parliaments around the EU can trigger, under current arrangements, a review by the Commission of a proposal they have submitted. We are suggesting that, as well as enhancing that power, we should give consideration to giving to a single national parliament but a development of the process that is in the Lisbon Treaty under which a given number of national parliaments around the EU can trigger, under current arrangements, a review by the Commission of a proposal they have submitted. We are suggesting that, as well as enhancing that power, we should give consideration to giving to a single national parliament but a development of the process that is in the Lisbon Treaty under which a given number of national parliaments around the EU can trigger, under current arrangements, a review by the Commission of a proposal they have submitted. We are suggesting that, as well as enhancing that power, we should give consideration to giving.

Mr Lidington: There is a role for the European Parliament written into the treaties. Whatever views Mr Heaton-Harris or I may have about whether it was wise to get to where we are today, that is where we are in treaty terms. In fairness, a large number of MEPs from all political families are committed, work incredibly hard and make themselves experts in their specialist areas of policy. But I do not think the evidence suggests that according the European Parliament additional powers, as the last three or four treaties have done, has added to public confidence. The Pew research surveys and Eurobarometer surveys show that trust in the EU and its institutions is now at an all-time low across the EU 27 or 28 as a whole. It is worse in terms of public confidence in France than in this country.

Q482 Chris Heaton-Harris: That would be very useful. This Committee participated very much in the singular yellow card issued on those Monti II proposals. On the red card issue, I distinctly remember the conversation that was had at the time of the debate heading towards the defunct constitutional treaty. Member State parliamentarians were quite keen on the red card and European parliamentarians were not, because they believe that they are elected representatives, as they truly are, even though I know more people voted to evict Bubble from the second ever Big Brother house than voted for me in 1999 to get to the European Parliament. It is a democratically elected institution and they are saying, “We are the people who should be turning down these European Commission proposals.” How do you get over that divide between two sets of people legitimately elected?

Mr Lidington: There is a role for the European Parliament written into the treaties. Whatever views Mr Heaton-Harris or I may have about whether it was wise to get to where we are today, that is where we are in treaty terms. In fairness, a large number of MEPs from all political families are committed, work incredibly hard and make themselves experts in their specialist areas of policy. But I do not think the evidence suggests that according the European Parliament additional powers, as the last three or four treaties have done, has added to public confidence. The Pew research surveys and Eurobarometer surveys show that trust in the EU and its institutions is now at an all-time low across the EU 27 or 28 as a whole. It is worse in terms of public confidence in France than in this country.

Q481 Chris Heaton-Harris: Just remind the Committee how many times the yellow card procedure has been used.

Mr Lidington: The yellow card has been deployed successfully only once so far on Monti II proposals.

Mr Lidington: In not quite four years since Lisbon came into operation. Our case for enhancing those powers would be made stronger if we could show evidence that national parliaments were deploying the existing powers and finding them inadequate. The fact that the scope is limited to subsidiarity only is an unnecessary check on national parliamentary action. We pride ourselves in this country on the vigilance of our parliamentary system. If I look at the House of Commons and House of Lords together, there have been fewer Reasoned Opinions than the Swedish Parliament has put forward. It may be that we need to look at technical changes, for example to beef up COSAC. This is a matter for Parliament, not the Government, but perhaps we need to look at the parliamentary unit attached to UKREP. Are they sufficiently well resourced and staffed to keep an eye on everything that is happening in the Brussels machine? That might provide better communications and exchange of information so that parliaments can take a rapid decision about something. It may be that we in government need to look at how we can highlight subsidiarity concerns with greater clarity in Explanatory Memoranda. I am certainly open to all those ideas.

Q483 Kelvin Hopkins: Isn’t the reality that the European Parliament is overwhelmingly a rubber stamp for what the Commission want? There might be some worthy individuals in some small parties who object, but by and large they go along with it?

Mr Lidington: I would not go that far. It is true that the centre of gravity in the European Parliament as an institution is to regard greater European integration, which the Chairman characterised as moves towards political union, as a self-evident good. The working culture of the European Parliament is to prefer integration. It is the case that they alter proposals that have come from the Commission via the Council. Only yesterday, we had news that, on the proposals regarding UCITS salaries and bonuses, the European Parliament had rejected the pay cap proposals that had emerged from the Commission and Council proposals. 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. The memory of the fate of the Santer Commission sticks in the minds of today’s Commission, perhaps future ones too. They are always looking over their shoulder at the European
Parliament and adjusting their position accordingly to make sure they lean towards them rather than the Council.

Q484 Jacob Rees-Mogg: You said the treaty has given these powers to the European Parliament and essentially we are stuck with that, but I thought the Prime Minister’s position was that we would renegotiate the treaties. Are you saying that, in that renegotiation effort, prior to the promised referendum, the powers of the European Parliament would not and could not be part of it?

Mr Lidington: I am not saying there is any aspect of the treaty that at this stage should be ruled out of further consideration. The Prime Minister has always said that his ideas for European reform can in part be accomplished without getting to treaty change, but he believes that at some stage in the next few years—my consistent view is that the opportunity is between late 2014, when the new Commission and Parliament are in, and the end of 2016 ahead of a French presidential election in 2017—the treaties need to be reopened, and there is a dynamic within the eurozone that is likely to lead to the requirement for that to be addressed in any case. If the treaties are addressed, I would expect that some people in the European Parliament will come forward and say, “We want to have more powers now.”

There will be other issues concerning the European Parliament, for example the age-old question of the shuttle between Brussels and Strasbourg. The requirement to sit in two places is written into the two treaties and can be altered only by looking again at those treaties. Therefore, the role of the Parliament is bound to be a subject for discussion whenever the treaties come to be opened. We are now as a British government trying to develop the debate to get ideas into circulation and see where we can get support for proposals that will enhance the role of national parliaments.

Q485 Chair: To take you back to the Bloomberg speech, I and many others now regard the famous fourth principle as more important than all the rest of the speech put together. The Prime Minister says there is not a single European demos, and it is national parliaments that are and will remain the true source of real democratic legitimacy and accountability in the EU and all the rest that he said in that speech. I put that on the record. Given that and what you have been saying, the question of democracy in the terms we have understood it in the evolution of our parliamentary system is at the heart of the Bloomberg speech. Therefore, the question Jacob Rees-Mogg has just raised about fundamental renegotiation goes to the heart of what you are saying as well. With respect to the red card and the concerns being expressed all over Europe, as well as in the United Kingdom, about democratic legitimacy and accountability. Do you have any other ideas for strengthening the role of national parliaments?

Mr Lidington: The ideas we have put out in public at the moment are partly about quite technical ways in which we can strengthen the co-ordinating mechanisms. There are issues to do with how we can make the COSAC secretariat stronger and how scrutiny works at individual national level. As well as the red and yellow cards, other ideas are worthy of examination and could be embodied either in a working practice or treaty change, or both. You can adopt a new working practice ahead of cementing that in a treaty change. For example, one could give national parliaments individually the right to summon European Commissioners, or should COSAC have treaty power to do that? The Commission say, “We are always happy to come and talk to national parliaments if we are invited.”

Q486 Chair: Viviane Reding did not even come to the COSAC meeting. She did it by a blue-sky video.

Mr Lidington: This is not unknown even for Council meetings. In the case of President van Rompuy, he sometimes appeared on the screen when we met in Luxembourg and he was in Brussels.

Chair: But it is slightly William Blake.

Mr Lidington: Power to summon and question might be one thing. I have not developed my own thinking on this or tested it under public scrutiny, but the European Parliament has a right to propose an own initiative report that requires a formal Commission response. Very often, the Commission end up incorporating that into their programme of action. Should we have a system under which national parliaments, either individually or a certain group, have an equivalent right to produce an own initiative report that requires a Commission response?

Others are suggesting, mostly in the context of eurozone politics, but it could apply to the EU as a whole, that you have a second chamber of the European Parliament composed of national parliamentarians. That idea is out there. Knowing the constituency workloads of Members of the House of Commons, it is difficult to see how in practice that could work. Saying that it could be a role given to a reformed House of Lords probably takes me into dangerous political territory in a number of camps. I am administering the equivalent of an electric shock to Mr Rees-Mogg, but that idea is already out there.

That is being discussed in the context of conversations within the eurozone among think-tanks and others about how to make more integrated fiscal and economic policy decisions democratically accountable at some sort of eurozone level.

Q487 Chair: I am sure you would agree that the reason for the insistence on national parliaments, as the Prime Minister put it in the Bloomberg speech, is not because of an idea that has come out of nowhere; it is rooted in the fact that, at general elections, the electorate vote based upon promises and democratic values and traditions, and the voter makes a decision as to what he wants to do. Therefore, that is at the heart, is it not, of the reason we have to put such emphasis on national parliaments? It is general elections that decide the government of the day.

Mr Lidington: Yes, with two additions to what you said. First, as far as I can see, at European parliamentary elections, most voters around the EU vote on national grounds—whether or not they want to administer a kick to their national governments. Secondly, while rightly this Committee focuses on the role of national parliaments, let’s not forget either the importance of asserting the role of the European Council, which is the voice of democratically elected and accountable national governments.
Q488 Chair: But the consequence of qualified majority voting in that Council also can conflict with the decisions taken in national parliaments. That is another thought you have at the back of your mind, surely.

Mr Lidington: It can do. QMV in terms of the policy substance sometimes works to our disadvantage and sometimes to our advantage. It would be quite wrong to think that it is always the UK that is trying to block a proposal. There have been proposals to liberalise the market where we have been among those urging European action, and protectionist partners have tried to resist that. That is why the Thatcher Government, in the days you will remember, accepted QMV for single market legislation.

Chair: You will remember that I also tabled an amendment that nothing in the Act shall derogate from the sovereignty of the United Kingdom Parliament.

Mr Lidington: Yes.

Q489 Mr Clappison: I welcome what you have said so far in your approach and the admissions you have made about the democratic deficit. However, can I urge a word of caution? In your last answer, you talked about reopening the treaties and the dynamic within the eurozone countries, and countries that are to become part of the eurozone, about changing the arrangements for that. Unless you can contradict me, every future change we have seen in the European Parliament has worsened the democratic deficit. Any future treaty change will be against the background of actual or potential eurozone countries coming together to settle things for the benefit of the eurozone. We who do not want to be part of the eurozone will be tagging along with this and are likely to be caught in its slipstream.

Mr Lidington: While that risk is there, and certainly there will be a wish by colleagues in the eurozone to have arrangements that make it possible for them to stabilise their currency union, to which they are committed, there is no evidence in anything I see that they are choosing to act as a caucus against the interests of non-euro members. I do not see Dutch and Greek Ministers taking the same side on many issues at the Council.

Q490 Mr Clappison: They have a common interest in what happens in the eurozone. Correct me if I am wrong—you will know about this, especially as Europe Minister—but the debate going on is that the northern European countries want more say over what happens in the southern European countries because they do not want to have to pay for them, and that is likely to produce more centralisation and federalisation.

Mr Lidington: In the eurozone, we are seeing a tension between an economic logic that points towards fiscal and economic integration of a more intensive kind to complement common monetary policy and interest rates and, on the other hand, the political dynamic in the different countries. To simplify it, the northern eurozone countries say that if their electorates and taxpayers are to underwrite the liabilities of others, there should be rules and they should have a say in how those other countries run their economies, and there is resentment against foreign interference on the streets and in the capitals of some of the southern eurozone countries.

Mr Clappison: As we have seen in Portugal today, which is surprising.

Mr Lidington: That is the reality. Our eurozone colleagues have to come to terms with those tensions, how to find a way forward, but at the moment I do not detect any kind of push to say we will ignore the interests of the United Kingdom, Poland, Sweden or Denmark or the others outside the euro, and think only of the eurozone. We each guard against that risk. Mr Clappison is right about that. We talk constantly to other partners who are outside the euro, and we try to those inside it, about the need to have arrangements that are fair to everybody. For example, in the recent Dutch Government review of subsidiarity, we have seen recognition of the issues we often discuss here in Parliament. There is a readiness to engage in this debate in euro-ins and euro-outs alike.

Q491 Chris Heaton-Harris: I have one point for the Minister about the European Parliament, which I know he knows a bit about. When I was elected there in 1999 a very elderly German CSU member took me to one side and asked me why I was there, which was a fairly good question at the time because I did not know. He said, "The reason I ask is that, if you believe in democracy being exerted at Member State level, you should go to your Member State parliament. The European Parliament is for people who believe in democracy being enacted at European level." There is always going to be that dynamic. I have a range of questions. I went along to a session at the Foreign Office with a range of opinions. I did not remember what it was called, Mr Hodgson, but I had a very nice headline. Essentially, it was a group of us talking to Foreign Office officials, with a range of opinion on how European integration should go. One thing we all agreed on when we left was that first reading agreements were a very bad thing for democracy because everything is done so quickly, and it causes some issues for national parliaments in their remit of scrutiny. These things go very quickly and lots of deals are done behind the scenes. Something that appears impenetrable suddenly becomes a decision that is completely done and dusted without what I see as due process. In the last three years of my time at the European Parliament, I voted against every single one of them, even though some seemed to be relatively good for the UK. It was just that the process was unbelievably good for the UK. How do you see the increasing significance of trilogue negotiations and first reading deals, and the challenges they present to scrutiny committees across Europe, and how can we deal with them?

Mr Lidington: I completely acknowledge Mr Heaton-Harris’s point. These difficulties are not confined to scrutiny committees. If I think back to the recent final stages of the negotiations on the multi-annual financial framework, the Irish presidency, having consulted the General Affairs Council through COREPER and bilaterally, went to the Parliament and had discussions, and we as the Council representing national governments had to wait for the Irish to come back and say, "These are the changes that we think will induce the Parliament to give its consent to the MFF package overall." Those conversations take place without all 27 being in the room. I suspect there
is no perfect way in which to deal with this, given the current treaty arrangements. I would certainly be willing to look with an open mind at any proposals that come out in this Committee’s report. What is important in the UK is that Departments take seriously their duty to keep the scrutiny committees updated at key points in negotiations. This does raise a question, which may come up later in our session this morning, about the balance to be struck in how scrutiny Committees handle things between the Committees’ wish, rightly, to be transparent and open with the public about what they are doing and the questions they are putting to Ministers and officials, and the requirements of government when a negotiation is still ongoing not to go public with a full negotiating hand describing fallback positions, red lines and so on in a way that could make it more difficult for us to achieve our negotiating objectives.

Q492 Chris Heaton-Harris: I completely understand that. When I first heard I was going on to this Committee I wrote to the Chairman to say, “Shouldn’t we meet in public?” but we do not. Therefore, that really does not apply to this Committee in this Member State Parliament. Sir Jon Cunliffe told us that the Government should aim to ensure that the Committee is updated in what we think will happen in the trialogue process. The Committee would quite like to know how this should be done with documents that have already cleared scrutiny and we have given you some cover, as it were, going forward.

Mr Lidington: Normally, it could be done by sending officials to have an informal briefing. This is something we do regularly with the European Union Committee in the Lords. It could be done by way of letter. It is sometimes easier for officials to be more open with the Committee in a private oral session than on paper, because, quite properly, the paper is going to be made public. If the Committee feels that either in government generally or in particular Departments the responsibility to keep the Committee up to speed is not being given sufficient weight, I am very happy to take that away, look at it and discuss it with ministerial colleagues. There is also the question: which of the multiform negotiations going on at any one time does the Committee want to spend time pursuing in detail in this way?

Q493 Chris Heaton-Harris: There are themes where the Committee has more interest, which you can almost guess from the letters that you will be receiving, but there is an opportunity that I guess just complicates bureaucracy: should we make more use of the deposit of new versions of documents or Supplementary Explanatory Memoranda to reimpose the scrutiny reserve?

Mr Lidington: It depends a bit on the category of documents, because when drafts are being circulated, they are not normally covered by the scrutiny resolution. George Hodgson is from our EU department. Am I right that the drafts that come out of a trialogue are not covered by the scrutiny resolution?

George Hodgson: No, just the formal documents that come out of it.

Mr Lidington: It is the formal document after there has been a Council decision on something. At that point, scrutiny is triggered and you get an EM which is public. The Committee reports on the Explanatory Memorandum and that report is public, even if the Committee’s deliberative session is in private. My starting point would be that we might be able to talk about discussing privately with the Committee the content of some of the drafts and suggested negotiated changes, but I would be very reluctant to have a public discussion about that when negotiations are live and often fast moving.

Q494 Chris Heaton-Harris: Do you agree with the evidence of Professor Hix to this Committee that the Council is a secretive organisation that should act far more transparently when it is legislating in non-CFSP matters, which is echoed by calls from the European Parliament in budget negotiations with the Council almost every year?

Mr Lidington: There was a time when I would have agreed with Professor Hix completely. The problem with the approach he suggests is that you would see a further development of what is already happening in the Council, which is that, when the cameras are switched on, people are more guarded in their language. If we want to speak very bluntly to the Commission, or other Member States, that waits until lunch or dinner with Ministers and the Commission alone, and then we let rip.

Chair: Of course, you might be overheard.

Mr Lidington: I had better not get drawn into that. There has to be a space within which Ministers, or COREPER officials serving on the Council, can talk confidentially, without negotiations being conducted through the media.

Q495 Chris Heaton-Harris: How can our scrutiny of developments in closed negotiations be improved? Could it be facilitated by our access to UK Government non-papers? How do you define non-papers?

Mr Lidington: Non-paper tends to be whatever a Department wants to define it as. It is 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.

Q496 Chris Heaton-Harris: So, it is like a Twitter troll in a Government Department.

Mr Lidington: 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-minded to constructive criticism and contrary ideas. It is starting a debate, in Westminster terms it is a pre-Green Paper stage. When it comes to closed negotiations what I have found works with the House of Lords Select Committee is the occasional briefing by officials in private session when there has been a particular concern of the Committee. We are quite happy to tell the Committee quite a bit about what has been going on, but we have not felt able to make that public.

As to non-papers, precisely because they are informal, they are not depository 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.
Q497 Chris Heaton-Harris: The Government have agreed to supply us with limité documents on request. Would you agree to the introduction of a system whereby we, as the Scrutiny Committee, could receive a formal listing of these documents issued each month so we know what we could ask for? Should these documents related to proposals still under scrutiny be made available to the Committee automatically?

Mr Lidington: I will have a look at the first proposal about a regular list and see if that is something we can do without it breaching our obligation as a Government not to go beyond the confidence of EU Council discussions.

Q498 Chair: You may remember that I had to put down an urgent question relating to a very important issue regarding the EFSM, the European financial stability mechanism. It came to me because I was given a copy at a COSAC meeting of a limité document that had an extremely strong bearing on our relationship with the EU, bailouts and all the rest of it. The Speaker thought it so important that he gave an urgent question on it. As to questions of confidentiality—thinking about our Standing Orders and all the other constitutional aspects of our responsibility to the House and the electorate—if a matter is deemed to be limité because it suits the Council, it does not alter the fact that our first duty is not only to the House of Commons but the electorate as a whole. I am sure you would find that understandable.

Mr Lidington: There is an inherent tension here. I absolutely understand what you are saying. My understanding is that, where other national parliaments around the EU are given access to limité documents, it is done on an informal basis and those documents are not subject to the formal scrutiny process. It might be an element in a mandate system of parliamentary scrutiny that also includes a private discussion between the Minister and the Committee, at the end of which the latter approves the scope of the negotiating mandate that the Minister then takes forward. If we were to consider making limité documents routinely available to the Committees, I am not opposed to that as a matter of principle. However, I would be opposed to that if it were routine for those documents to become public. 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.

Q499 Chair: Surely, you would appreciate that the limité process, as in relation to confidentiality in the more general field of law across all kinds of commercial activities and the rest of it, can be used, as with the attempts to close down discussion over the health service, which we have seen recently. The principle is that using this kind of confidentiality tag of limité could be seen as a cover for ensuring that nobody really knows what is going on until the decisions are taken, although they have enormous national significance. On priorities, if, for example, as Chairman I was sent a copy of something, no doubt my legal adviser would tell me, “That is bound by confidentiality, and that is the way those rules have been constructed,” but I may take the view that, in terms of our Standing Orders, I have less regard for the fact that people want to keep it quiet than for the fact it ought to be made public because it affects the House of Commons, the scrutiny process and the electorate as a whole. I am sure you would appreciate that is where the buck stops, which is basically with me or the Committee.

Mr Lidington: It is important that the UK as a member state government continues to be able to discuss matters under negotiation in confidence with its partners and the European Commission. Other governments will share that approach.

Chair: You say “governments”.

Mr Lidington: I am speaking on behalf of the Government in saying this. You are right to say that any classification of a document, whether at national or European level, is a power capable of being abused, and in order to treat as confidential things that, frankly, ought not to be, but that is a different question from the argument about whether or not such a power to designate ought to exist at all. So long as the limité category exists, we have a duty as the United Kingdom Government to abide by our obligation to protect documents that are for Council-only circulation, but we are content to carry on sharing limité documents with the Committee if that is in confidence.

Q500 Chris Heaton-Harris: Does the Foreign Office, therefore, see the limité document as a useful tool, or something it would prefer to get rid of in the name of openness and transparency?

Mr Lidington: We will need a classification that enables draft texts that reflect the outcome of verbal negotiations to be circulated and discussed in confidence. For example, some of the text of draft proposals that come forward on, let’s say, various trade or foreign policy matters or agreements need lawyers to crawl over it to check exactly what it is. Does this draft accurately reflect what we thought had been agreed in a particular conversation? Does it reflect our interest satisfactorily?

Q501 Mr Clappison: In all this who decides what should be limité?

Mr Lidington: I think it is the Council secretariat that does it.

Mr Clappison: It is done by officials and then we rubber-stamp what they decide?

Mr Lidington: I will write to set that out more clearly, but I think it is the Council secretariat. It is a matter of established practice.

Q502 Chair: In the context of the urgent question that I got, it was perfectly clear that the reason for the limité was to suit the convenience of the Council in relation to the release of information regarding bailouts, it was nothing to do with drafting or redrafting. It was quite clear on the face of the
document that they had made a decision that they did not want the rest of the European Union or, for that matter, the national Parliament to know about.

**Mr Lidington:** In that particular case, some of the detail was market-sensitive information but, in the case of any negotiation, once it gets beyond the stage of arguments about drafts, we are into a Council decision. In the case of most categories of legislation, that is caught by the resolution.

**Q503 Mr Clappison:** Surely, the general principle of freedom of information as we observe it in this country is that you do not estimate to know everything, not just what officials and secretariats think you should know.

**Mr Lidington:** The Freedom of Information Act bites upon United Kingdom public authorities, not EU institutions.

**Q504 Mr Clappison:** If we are to request these documents, how do we know what is in them that might be interesting, and whether they exist at all?

**Mr Lidington:** The Committee will be aware that a negotiation is going on about a particular subject. If the Committee wants to know more about the progress of negotiations, normally I would be happy to send my officials along.

**Q505 Mr Clappison:** What if there was something in them of interest to us but we did not know anything about it and so did not know of its existence?

**Mr Lidington:** The trouble is that we are getting almost into Rumsfeld territory of unknown unknowns.

**Chair:** There are a lot of unknowns, and in a moment we will be coming to the matter I raised with the Prime Minister about the negotiating mandate on European free trade agreements.

**Q506 Jacob Rees-Mogg:** I want to pursue Mr Heaton-Harris’s question about first reading deals. It seems to me that, on limited, a first reading deal can be done to create a law that has been done entirely in secret. That seems to me so wholly unconstitutional and improper that the Government ought never to be party to it.

**Mr Lidington:** They will know. It will not have been done entirely in secret. The Council’s decision that agrees the Council’s position that subsequently goes to the European Parliament first takes place on camera in Brussels. The president of the Council says, “The cameras are being switched on and we are now in formal legislative session”; similarly with debates on a measure that take place within the European Parliament.

**Q507 Jacob Rees-Mogg:** But it has been agreed at that Council stage. Before the cameras are switched on, it has been agreed that this is going to be the new law.

**Mr Lidington:** Yes, but in the same way that a discussion in Whitehall between different Government Departments about a proposal takes place notionally away from the media and, when the Government collectively have taken a view, it comes out into the open.

**Q508 Chris Heaton-Harris:** It comes to Parliament where we have three readings and it goes between Commons and Lords. In European institutions, you can have a Council meeting that does this literally on one day, and the Parliament waits for the first reading deal, because it wants to get the deal done—there are not many plenaries at the moment—in plenary session the following week. It can be done in seven days.

**Mr Lidington:** The problem with the implication behind what Mr Rees-Mogg and Mr Heaton-Harris are saying is that, if one simply brought the cameras into the meeting between the rotating presidency and the European Parliament’s negotiators, let’s say, in that triologue, you would end up having a separate informal meeting where there would be frank conversations, and it would be a rather stilted pro forma meeting to meet the requirements of openness.

**Q509 Jacob Rees-Mogg:** To understand these first reading deals better, at the point at which it is agreed by the Council, there have already been negotiations with the European Parliament so that it is known it will get through at European Parliament level?

**Mr Lidington:** No. The Commission will make a proposal. That is discussed by the Council, initially by officials. There is usually a great deal of informal conversation, through UKREP on our part, and it will go to COREPER. It will come to the appropriate sectoral ministerial council meeting. The ministerial level meeting may debate it in some detail and send it back, though on the multi-annual financial framework, a whole number of different meetings were devoted to this. On other occasions, we meet as Ministers and a deal has been done by officials with the approval of the relevant departmental Ministers in national capitals, and it has been quite easy to agree a compromise text. The Council takes a formal decision. That is subject to scrutiny at that point. It is caught by the resolution. We send an explanatory memorandum to this Committee. The proposal then goes off to the European Parliament, but the presidency engages in negotiations with the Parliament to see what their views are. The Parliament has its own process at its end.

**Q510 Jacob Rees-Mogg:** For there to be a first reading deal, has it already been squared with the Parliament before the Council makes this announcement?

**Chris Heaton-Harris:** The Council is very much aware of the Parliament’s position.

**Mr Lidington:** It is informal awareness, yes. The Parliament will be aware of what is being discussed at Council and what has come out of the Commission. Those MEPs who have committee or rapporteur responsibilities will have signalled if they are unhappy with particular aspects of a proposal, so we will have a pretty good idea of where the areas of controversy are likely to be.

**Q511 Chris Heaton-Harris:** Could we have a note about the last three first reading deals and the timetable they ran to? It would be quite interesting just to demonstrate the speed of the process and what sort of deals they are. I have a final question, about streamlining the explanatory memorandum process. Do you have any specific suggestions for the types of proposals that could be subject to shorter EMs?

**Mr Lidington:** I will provide a letter on the first reading deals on triilogue. Obviously, we will have to
talk to whichever Departments were the lead on those dossiers to make sure we have got it accurate before we write to the Committee.
I will flag one point before I come to streamlining. I said there is a lot of early engagement—informal conversation—before we get a Council decision, let alone before it goes to Parliament for the triilogue. It is worth Westminster thinking about whether it is engaged at the Brussels end of the process sufficiently early. If you look at how the Germans do this, the Bundesstag and Bundesrat have about 18 people representing them in Brussels, the two Houses at Westminster have three. There is a genuine question for this Committee and the Lords Committee about whether more needs to be done there.
It is worth stressing again that explanatory memoranda are produced first on the original Commission draft and then the Committee is updated during negotiations, usually by letter from the relevant Minister. Ministers agree to the formal legislative decision at the Council if it has cleared scrutiny, subject to the rules on overrides that are invoked if the Government consider that to be necessary, but normally the Minister will agree only if something has cleared scrutiny and it has gone through the process here.
Streamlining needs to be looked at in the light not just of the Committee’s current business but also those questions the Committee has raised in the past about action plans, which you may wish to come to, Chair, and also implementing and delegated legislation. In the case of all those categories, there are some things that may well be politically significant; there are others that, frankly, are technical and pretty routine, which I do not think the Committee would want to waste much time considering.
A very large amount of paper flows backwards and forwards. It imposes a huge workload on the Committee, and the Committee deals with it diligently. If we look at how the Danes do this, they have a mandate rather than a document-driven system. My understanding is that they look at about 75 mandates in the course of a parliamentary year. There is a vast area that the Danish Parliament decides is not a high enough priority area for them to get the Minister in and discuss the mandate in detail. If we are applying greater selectivity to a document-based system, I look at the German system. For example, we have a decision to establish a new CSDP mission, and a month or six weeks later there is an implementing decision to give effect to the decision in principle that has already been made. At the moment we have to send a separate explanatory memorandum on each of those decisions. My personal view is that, frankly, one ought to be enough, and it would save the time of both the Committee and my officials if we could dispense with the second of those and just rely on the first to provide scrutiny. That is one example—other Departments may have others.

Q512 Chair: I am conscious of the time factor. Could you give us an indication as to when you need to move on?
Mr Lidington: I am okay at the moment.
Chair: This is a very important moment in our inquiry. We are taking the opportunity to look at the context of a lot of the evidence we have received, so we are very grateful to you.

Q513 Kelvin Hopkins: I raise a subject that I have raised several times before. The great majority of the evidence we have received recommends returning to permanent membership of European Committees because the current system of ad hoc Committees is not working. As you told us in 2011, “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.” Are the Government still set against permanent memberships, and, if so, why?
Mr Lidington: I have said to the Committee before that, in my first Parliament, I sat on one of those permanent Standing Committees for several years. The reason there is scepticism on the Government’s side, particularly among business managers, is that the old system started to fray because Members of Parliament were very unwilling to serve on those Committees. It was increasingly difficult to get MPs to show up, people to sit there and accept it. I absolutely see the advantages of the approach Mr Hopkins suggests, but, for it to work, it requires a sufficient number of parliamentary colleagues who are prepared to devote quite a lot of their time to becoming experts on those areas of EU-level policy. In the past we found it really difficult to get people to do that. People not always want to commit themselves to the Committees under current arrangements, but if they feel they have that duty every now and then, it becomes easier to secure attendance under the old system. That is the reason for the scepticism; it is simply about practicalities.

Q514 Chair: Surely, if you look at Bloomberg and the whole change in the nature of the interest that is being taken in the European issue on all sides of the House, the focus is such that more people would be better equipped if they had more expert knowledge as a result of being there so they could ask the right questions, whereas quite often all of us who have been on these Standing Committees would agree that the whips expect people to sit there and accept the discussions, although one or two people will ask the right questions. In terms of giving the public and the media a greater understanding of what the issues are, a person could become expert as you have, partly because of your being on the Committee and partly, I suspect, because you were a special adviser to Douglas Hurd back in the 1990s. You have acquired extraordinary expertise in these matters, but there are many other Members of Parliament who will perhaps find it relevant to the current debate about our relationship with the European Union.
Mr Lidington: I am very much in favour of many more Members of Parliament coming to regard an understanding of EU processes and policymaking as an integral part of doing domestic legislation. It is wrong to think of the EU policymaking process now as something in a separate annex. We have to regard it as mainstream. Membership of Standing Committees may be one way of addressing this. I continue to believe that departmental Select Committees should be prepared to do more early engagement on the basis of their duties, which, as you have said to me before, Chairman, are set out under Standing Orders at the moment. The Justice Select Committee did some good work on data protection and European legislative
initiatives in the latter part of last year, but not every Select Committee has that degree of enthusiasm.

Q 515 Kelvin Hopkins: One of the problems that arises is not just lack of knowledge of or interest in European issues being debated but the procedures. Members come along who are unaware of how the Committees are supposed to operate. Sometimes even shadow Ministers and chair and panel members are not absolutely certain how they should operate. When they were permanent, everybody knew how they worked. All sorts of problems arise from the ad hoc approach. Do the Government have any alternative suggestions to make that would improve the current system?

Mr Lidington: We would be keen to see the departmental Select Committees take on more early engagement and scrutiny, with a small “s”, of European decisions. 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.

Q 516 Chair: The point you have just made with respect to whether or not people take an interest is extremely important. You cannot tell whether you should take an interest unless you know enough about the relevance of what is being decided at European level and its impact on domestic legislation. By the look of it, the general public have now formed an opinion that they regard this as a matter, complemented by the Prime Minister’s proposal for a referendum, where it would be extremely important for Members of Parliament to have the opportunity to know more and relate it, as Kelvin said, to the goings on in the Committee itself. Do you think we are getting close to being on the same page on this?

Mr Lidington: We have very much the same objectives. If the Committee reports in favour of permanent membership of Standing Committees, and there is clear support for that in the House, the Government will want to reflect on that very carefully.

Q 517 Mr Clappison: Much of the evidence we have received states that the earlier the scrutiny, the more influential it is. You have said this yourself. If that is right, when ideally do you think European Committee debate should take place?

Mr Lidington: It starts before the formal scrutiny process. Parliamentary engagement needs to start when we have Green Papers, White Papers, Commission work programmes, or even earlier; it is when ideas are being kicked around. That was why I said earlier that I thought Parliament might want to reflect on the strength of its representation in Brussels, and it would be right for departmental Select Committees to do some forward thinking about how EU-level initiatives might influence the areas of policy that they are responsible for covering. 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.

Q 518 Mr Clappison: Can I raise a very recent example of this that has arisen on which perhaps you would give us your views: the Tobacco Products Directive? You may be aware that that is a very important revision of a directive setting out a whole new series of requirements for tobacco products. It is controversial and people wish to have their say. As soon as it found out about it, this Committee told the Minister dealing with it that it was interested in it and held it under scrutiny reserve. I believe the Minister has just agreed a general approach before there was any opportunity for Parliament to debate it, never mind how many people were employed by this Committee, Parliament or Brussels, or what Select Committees felt. How effective do you think parliamentary scrutiny has been in that case?

Mr Lidington: From what Mr Clappison says, it certainly sounds like a question that needs to be answered.

Mr Clappison: I think that is a fair summary of what happened.

Mr Lidington: From memory, the Tobacco Products Directive is a Department of Health responsibility. The best I can say this morning is that I will take note of what Mr Clappison has said on that specific example; I will consult my colleagues in the Department of Health, and either they or I will write to you, Chairman, and Mr Clappison to set out what happened there.

Q 519 Mr Clappison: That is very helpful. Should the option of European Committees also considering delegated legislation resulting from EU commitments, thereby tying up both ends of the legislative process in a single set of Committees, be considered?

Mr Lidington: This is where we come back to streamlining. There are about 1,700 items of implementing and delegated legislation every year. I do not think that the Government want to have to write 1,700 further explanatory memoranda, and I suspect the Committee would not welcome having to read another 1,700 explanatory memorandum. 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 Committee. Sometimes the Government have deposited politically significant proposals. It is not done systematically. Scrutiny Committees both here and in the Lords have suggested ways forward, for example having in normal explanatory memoranda a separate subheading that highlights whether provision is made for delegated or implementing Acts, and, if so, for what areas of that particular directive or regulation; and also some sort of codified rule under which proposals for delegated and implementing Acts that are either legally or political sensitive should be deposited. I come back to streamlining. I would be very willing to take those ideas forward and try to get government to agree to those, but we would need to try to find a way of doing that without simply adding to the amount of paper already moving to and fro, and therefore in tandem we should look at areas where at present matters are subject to the scrutiny resolution and require an explanatory memorandum but are not
of huge political significance, and perhaps duplicate other matters.

Q520 Chair: In this context we have much more in mind statutory instruments that emerge, for example, from section 3 of the European Communities Act 1972. That is the implementation, by way of statutory instrument, of legislation that emanates from a treaty obligation. To rephrase the question in that context, should the option of European Committees also consider delegated legislation resulting from EU commitments? When I was on the Delegated Legislation Committee way back in the early 1980s, we had a system whereby all statutory instruments had a little mark against them saying it emanated from European legislation. That was agreed to by the Chairman of that Committee, the late Bob Cryer. It has since been discontinued. For practical purposes, when the Delegated Legislation Committees are looking at the legislation, they do not know whether or not it derives from the European Communities Act.

That is the context in which we are asking about the European Committees, because the implementation of the European Communities Act through a statutory instrument can be extremely important under European Committees, because the implementation of European legislation. That was agreed to by the Government side is that every proposal that is submitted an explanatory memorandum to the Government Minister responsible for this, how this came about?

Q522 Chair: As you know, this is a matter for which the Foreign Office Minister is responsible. You have been in correspondence both with them and the Prime Minister over a period of months about this. If you want to examine this further, it is really a matter that you have to explore with the Treasury. I do not want to breach confidence in any way. It is probably fair to say that the view of Treasury Ministers was that the initial reports from President van Rompuy and the other presidents were interim reports, and that the appropriate stage for a debate on these matters would have been when there were final reports that indicated a definitive set of proposals on the way forward.

Q523 Chair: But there is nothing definitive about the question of primacy; it is a fundamental principle that lies at the heart of everything we are doing in the House of Commons in scrutiny, and also at the heart of the fourth principle of the Bloomberg speech.

Mr Lidington: The Treasury considered it important to wait for further documents from Brussels on EMU so they could be debated along with those early interim reports. The documents they expected to be published were delayed, and that contributed to the delay in the debate. The fact is that at the moment we have a document-based rather than mandate-based system, and that is what drives the process. If the Committee wants to go into further detail on this, I ask that it takes it up with Treasury Ministers.

Q524 Chair: I can see that it is somewhat uncomfortable, but I am going to pursue it, because you are really saying that the delay had nothing to do with the Foreign Office, are you not?

Mr Lidington: The way in which scrutiny works on the Government side is that every proposal that is subject to scrutiny is the responsibility of a particular Government Department. It is for that Government Department to submit an explanatory memorandum to...
the Committee. It is then for the Government business managers, in consultation with the lead Department, to discuss a response to the Committee’s reference for a debate either in Committee or on the floor of the House. The Foreign Office does not have any kind of executive role over how EMs from other Departments are drafted. We have the responsibility, as we do this morning, to be accountable to Parliament for the overall exercise of EU policy and, where there are legitimate criticisms or suggestions for reform, to go back to other colleagues within the Government to try to lead the discussion about what the collective Government response should be.

Q525 Chair: I understand the process, but the question is this: this was an issue of primacy. This question lies at the heart of the scrutiny process and the status and role of the United Kingdom Parliament and our Standing Orders. We recommended that there should be a floor debate and it should be for three hours. We waited five months and were subjected ultimately to it being squeezed in with other matters, including three other debates for one and a half hours on the same day. It is simply not good enough.

Mr Lidington: I hear what you say, Chairman. Chair: But is there an apology to go with it?

Mr Lidington: This is something you will need to discuss with Ministers at the Treasury.

Q526 Chair: Could the format of debates in European Committee, which is basically an explanatory statement by a member of the European Scrutiny Committee and then a statement by the Minister followed by a debate, be followed for debates on certain European documents on the floor of the House, allowing perhaps up to half an hour for the statements and up to an hour for the debate?

Mr Lidington: To be clear, you are proposing this in terms of debates on the floor of the House?

Chair: Yes.

Mr Lidington: 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.

Q527 Chair: That is very helpful. Are you in favour of reinstating pre-European Council debates on the floor of the House?

Mr Lidington: If the Backbench Business Committee recommends them, Ministers will happily attend and take part, but these were explicitly among those debates that, under the Wright Committee proposals, were assigned to the Backbench Business Committee.

Q528 Chair: We have received evidence that pre-Council scrutiny in the House is particularly weak, amounting simply to a written statement by the relevant Minister. Do you agree?

Mr Lidington: I do not agree with that. If there are complaints about the quality of particular written ministerial statements ahead of Councils, I would be happy to look at proposals as to how one can improve those. Quite often, we get the final agenda only relatively late in the day. Those sectoral councils that consider legislative proposals—you will appreciate that the Foreign Affairs and General Affairs Councils tend to spend most of their time on policy discussions rather than specific legislative items—sometimes will not know, even until the day before Ministers meet, whether or not COREPER and other official discussions have narrowed down areas of disagreement, or even secured broad agreement between national governments, so it is quite difficult to be precise a long distance in advance.

Q529 Chair: Many other national parliaments rely on pre-Council hearings with Ministers as a more effective method of scrutiny of Council meetings. Do you agree that a pre-Council hearing with the relevant Select Committee would strengthen Parliament’s scrutiny?

Mr Lidington: It could work. It would mean a profound difference in how we did scrutiny. There is certainly a case for departing from the document-based system we have now and moving instead towards one based more on the Scandinavian model, where you work on the basis of a mandate. As you will know better than anyone, the precise powers and scope of Committees under the mandate system vary, depending on whether you are looking at Denmark, Sweden, the Netherlands or Finland. The approach has to be one of the other. I do not think it would be feasible to have both the current document-driven system and a mandate system in addition. There would be a question about how priorities were set. I mentioned earlier in this morning’s session that the Danish Parliament had about 75 mandate discussions with Ministers every year. As a member of the European Affairs Committee of Cabinet, every week I see several write-rounds from ministerial colleagues seeking collective agreement to a negotiating position on a particular item of legislation. They vary in the level of political importance or controversy. This Committee would be in permanent session 365 days a year if it tried to have a session with the Minister on each of those—it would be completely impractical—so some agreement would have to be worked out on how to identify those things of greatest importance, and for those to be the ones on which they would focus.

Chair: The fact is that, because we have the system we do have, we look at everything, and that means there is complete cover that nothing is being done that should not be done and we can inquire into it. The House of Lords has a different system. To that extent—you have mentioned it already—there is perhaps a more generalised approach based on looking at the policies that lie behind it in a more general sense, but if the Select Committees were to be involved, that would provide a balance between complementary assessment by us on a list-of-documents system on the one hand and the involvement, where appropriate, of a Select Committee in terms of more general policy questions, so I hope we are moving towards a system that will enable us to be able to strike that balance you have referred to. Of course, that would be subject to our further considerations before we come to the end of our report.

Q530 Jacob Rees-Mogg: I think this gets absolutely to the heart of the matter. We are trying to do two things, as Parliament. The document-based system is very good at redress of grievance. If there is
something that people are concerned about, that is covered; that is sent for debate; it could be on the Floor of the House. That is one of the most ancient responsibilities of Parliament. The mandate system is much more Parliament as a legislative body, because it is giving its consent to laws that will come in advance of them being implemented. We need to find out, in this inquiry into scrutiny, whether we are capable of doing both sides: both the redress of grievance and the consenting to legislation. Although you saying the quantity would be very difficult, and you are aware we may need to do more, we may need to find some hybrid system that is both document-based and mandate, so that we are doing the full job of a Parliament, rather than simply the redress of grievance.

Mr Lidington: I understand the points that Mr Rees-Mogg is making, and I see the logic behind them. I would make just two points, by way of response. First, as I think you would expect me to say, representing the Government, if there were to be a proposal for this type of hybrid system, consideration would have to be given to the amount of both official and ministerial time that would be involved. I could not simply agree to a set of arrangements that would impose a very considerable additional workload upon Government ministers in general.

Secondly, of course, a mandate system of whatever kind does raise again the question of confidentiality. The Scandinavian countries that have mandate systems have private sessions of their Committees with the Ministers. Those discussions are not made public, so the Minister can go off to Brussels having discussed the mandate with the approval of his Parliament, knowing that the negotiating position has not been described to all and sundry.

Q531 Nia Griffith: Last October, you told us about involving UKREP officials, perhaps, to give oral confidential briefings to relevant Select Committees. Can you tell us whether there has been any progress in that respect and whether you have general agreement across all Government Departments to participate in such sessions?

Mr Lidington: We tried to show, at the FCO, by agreeing to the Permanent Representative, Sir Jon Cunliffe, coming and giving evidence to this Committee, and by writing to the Foreign Secretary, as Chairman of the EAC, setting out what is being proposed, and the proposed negotiating position and the reasons for that. Other Ministers on the Committee then write in, or sometimes there is a discussion at a session of the EAC. At the end of that, a collective Government position is agreed, which, in
effect, defines the limits of the mandate under which UKREP then has to work. What then happens, of course, is that, at working group or junior official level, and ultimately at COREPER with the Permanent Representative or his senior team in the Chair, there are detailed negotiations. I know from the documents that I see, over my areas of responsibility, that where there is a proposal that would appear to go beyond the EAC mandate, and certainly anything that seems to test one of our red lines for negotiation, the Permanent Representative comes back to Ministers. I have had papers come to me where UKREP has said, “We think we can get X and Y, which you have told us are really important for British interests. In order to do that, we think we are going to have to sacrifice Z, which you said you want but is lesser order.” I can approve that, if it is within the EAC mandate. If I want to go beyond what is in the remit from the European Affairs Committee, I have to initiate a new write-round to Members of that Committee to get collective ministerial agreement, and therefore by definition cross-coalition agreement, to the variation in that position. I have done that on occasions, and so have Ministers in other Departments.

I go back to what Jon Cunliffe said when he gave evidence here. He said that, if things change, the Minister will write back to the Cabinet Committee. The Cabinet Office is heavily involved here in making sure that different Departments with interests are all in the loop as far as progress of negotiations is concerned. Of course, you are not dealing with something that is just dumped in the in-tray of the Permanent Representative. These proposals, as Chris Heaton-Harris knows very well, go through working groups; they are examined in painstaking detail by junior officials, by the legal advisers to the Governments concerned, before they come up to COREPER level.

Q536 Chair: If I may say so, Minister, the manner in which the whole of this issue is being discussed in the Scrutiny Committee inquiry that we have set up, and your responses, particularly today, in the context of Bloomberg and all the questions that are raised in COSAC about democratic legitimacy and all those matters, demonstrate that there is some really serious thinking going on about the manner in which the United Kingdom, whether in Government or in the European Union, in terms of democratic legitimacy. When we asked Sir Jon Cunliffe this question, if I recall it correctly, he did not rule out a pre-appointment inquiry of his successor, for example. He did not in any way commit himself to this, and maybe it was a difficult question for him to answer, but the reality is that he did not just say, “Well, that would be unacceptable,” which is what you are saying. I would simply say this. When I looked at the Liaison Committee analysis of the pre-appointment memorandum from the Cabinet Office, which was very interesting, there were lists and lists—you have probably seen them—of pre-appointment inquiries that have taken place in relation to other Departments. The one Department, I think I am right in saying, that has no pre-appointment inquiries is the most prerogative-based Department of all, which is yours. I am not entirely surprised to hear you say that. It goes back to the 17th century, I think. The question is whether it is really appropriate, at the present time, to exclude, as Professor Simon Hix put it, the head of UKREP as a representative of the British legislature in Brussels. He is saying that he believes there is a very close connection between what UKREP is doing, what the Ambassador there is doing, and the whole of the legislative process. We are moving into a new era, as it were. I invite you therefore just to reconsider the question. If you would like to, of course, you could write to us about it.

Mr Lidington: I am always happy to write to you, Chairman, on this or other subjects. I would say that Jon Cunliffe is a very experienced and able official, and he would have known full well that for him to have ventured either a yes or a no to your question about holding a pre-appointment hearing for his successor would have been quite improper. That is entirely a matter for Ministers to decide, not officials themselves.

Q537 Chair: That is not what he said. I had better quote him, because it is an opportunity that I am not going to miss. “First of all,” he said, “I think a number of my ambassador colleagues would believe they also had important roles in that sense. I have to say that that is a policy question. It is 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.” That is your opportunity.

Mr Lidington: Parliament can legislate for particular arrangements, if it chooses. 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.

Q538 Jacob Rees-Mogg: I was just going to ask, Minister, if you think that a role of this seniority and critical sensitivity, involving legislation, should be held by a Minister. The example is, of course, Harold Macmillan in the Second World War, who was a non-UK resident Cabinet Minister.

Mr Lidington: I knew that. That would be a way of squaring the constitutional circle on this. That is very true. I note in passing that no EU member state has a Minister in the role of Permanent Representative. I can absolutely understand the case that Mr Rees-Mogg is advocating. I would have a couple of quite serious questions about it. One would be over how that individual should be accountable to Government and Parliament. He would have to, presumably, if not a Secretary of State, be responsible to a Secretary of State. You would still be in the position where you would have to have a system, as we have now with the Cabinet Committee, for collective agreement to mandates in particular negotiations.

There would be an issue of practicality. You could have somebody, I suppose, who was a Minister in the House of Lords, who did not have a constituency to look after, in such a role, but for a Member of the House of Commons it would be extremely difficult, just in terms of the amount of time involved, to carry out that role.

There would also be the question as to how somebody who was a Minister in that role dealt with the Minister who was responsible for all the bilateral relationships with the 27 other EU member states. One thing that has really been borne in on me in the last three years is
that you cannot simply do European policy in Brussels alone. You have to know, and get to, Berlin, Paris, Rome, Warsaw, Stockholm, Madrid and Vilnius now, and so on. The advantage of the system that we have at the moment is that, at ministerial level, there is responsibility both for the European Union institutionally, and for relations with the member states of the European Union bilaterally. That could be at risk under this proposal.

Chair: Now we move on to Lidington opt-in debates on the Floor of the House. It could be described as your special subject, if I can put it that way round.

Q539 Mr Clappison: The Minister has been immortalised. Lidington debates will no doubt be familiar to generations of politics students to come. We were told, and have been repeatedly told, that the Government was committed to enhancing parliamentary scrutiny of EU justice and home affairs through these debates. So far, however, only two debates have taken place, both in circumstances that some would judge to be less than satisfactory. A third debate has recently been postponed. You and your ministerial colleagues have accepted, in oral evidence given to this Committee, that it is entirely reasonable to expect to have a minimum of one week’s notice of the Government’s recommended approach to important opt-in decisions so that we can report them to the House before the debate takes place and MPs can be properly informed. Can you tell us why the commitment to a minimum of one week’s notice is not reflected in the Government’s code of practice on parliamentary scrutiny of EU justice and home affairs legislation?

Mr Lidington: That last point is one that we want to come back to once we have done what needs to be done on the immediate issues that are before us and are quite understandably arousing concern amongst this Committee, the Lords Committee, and for that matter the Home Affairs and Justice Select Committees as well. We postponed the debate in the Commons to give the Government more time to consider its position on the Europol opt-in. Lord Taylor said that in proceedings to the House of Lords on 1 July. We are very clear about our intention—indeed our duty—to hold a debate, which will need a motion that sets out the Government’s position. The issue is an important one, and the detail of the proposed new Europol measure has required a lot of careful consideration about both the legal and the political implications.

I am acutely aware that, while we have until 30 July to make a final decision on Europol, the Commons is due to go into recess on the 19th. Without going into detail I ought not to go into, it is fair to say, in dealing with this issue, but even more so with the bigger issue of the 2014 mass opt-out or opt-out, there has been a need to seek agreement between different Government Departments that each have important interests at stake. There has been a need to consult the practitioners, who have views. There has been a need to secure agreement in the coalition, within which it is no secret that historically the two parties have approached these issues from somewhat different perspectives.

I very much regret the fact that it has not been possible yet to take forward these debates. Parliament is entitled to expect there to be sufficient time granted. I certainly apologise in advance if that proves not to be possible. I hope very much that we will be in a position to take matters forward on both Europol and the 2014 decision in the very near future.

Q540 Mr Clappison: Can you add to what you have said already on that? I appreciate that has been very generous. Would it be possible to have an undertaking from the Government that we will have at least one week’s notice of what the Government intends to do within the timetable you have set out, which is quite constrained?

Mr Lidington: I cannot give a firm commitment on that, no. I hope that the Government will be able to make its position clear in the very near future.

Q541 Mr Clappison: On the 2014 mass opt-out, which you have raised, have the consultations been concluded or not? We know nothing about the Government’s intentions.

Mr Lidington: Until an announcement is actually made to Parliament, one cannot say that a final decision has been definitively reached. Until something is openly said to Parliament and the Government has made a collective commitment, there is always the possibility that an event happens.

Q542 Mr Clappison: Will there be good time for Parliament to digest what the Government decides to do before there is a debate on this?

Mr Lidington: There are two things here. First, the Government has said that it is minded to exercise the mass opt-out and to seek to opt back in to a number of measures. We have pledged a debate and a vote in Parliament. What is also the case is that, if we proceed along the lines that the Home Secretary indicated last year, we would be looking at a period of negotiation on applications to opt in. It would be perfectly reasonable for the relevant Committees of Parliament to seek to follow the course of those negotiations, and perhaps have either formal or informal sessions with Ministers or officials about that. If, at the end of such negotiations, the agreements for opting in take the form of formal decisions of the Council, then those are, at that stage, automatically caught by these scrutiny resolutions as well. Therefore, at that stage too, in addition to what the Government has undertaken, they would fall subject to scrutiny, and therefore potentially to reference for further debate.

Q543 Mr Clappison: And a vote on them.

Mr Lidington: That is a matter for Parliament. In the case of any document that falls under the scrutiny resolutions, and on which an explanatory memorandum is deposited, if the Committee refers something for a debate, then that debate when it takes place has to be on a motion that is amendable and votable.

Q544 Mr Clappison: Minister, you have rightly said that this is all subject to the processes of the coalition. Can you tell me how this fits in with the Prime Minister’s announced review of competencies? If there is an opt-in back to any of these measures, will that then be subject to the review of competencies?

Mr Lidington: They are parallel exercises. The 2014 opt-in decision is a decision that is required of us
It is entirely up to somebody
Mr Lidington: the review of competencies or not?
Q545 Mr Clappison: Will it fall within the ambit of
the case they wish.
organisations that give evidence to submit whatever
affairs matters, it will be open to people and
chapters of that exercise that cover justice and home
Governments. When we come, in due course, to the
voluntary policy exercise, undertaken by the
those. The balance of competencies review is a
out in the Lisbon Treaty. There is no flexibility over
under the Lisbon Treaty and subject to deadlines set
in out in the Lisbon Treaty. There is no flexibility over

Mr Lidington: It is entirely up to somebody
submitting evidence to say whatever they want. For
everyone, somebody could make a case there to say
they would like to change the treaties to recreate
the third pillar. Someone might want to put forward
a case to argue that there is evidence to show that
particularly, JHA instruments have worked well and
and their scope should be enlarged. Someone could
argue for a European Public Prosecutor, if they
wanted to.
Q546 Mr Clappison: It would be open to the person
who is deciding on the outcome of this review of
competencies to decide, say, to opt out of matters
that we just opted in to.
Mr Lidington: No. With respect to Mr Clappison, I
think he is misunderstanding how the review is being
structured. The Foreign Secretary made it clear in his
statement announcing the review last year that it
would not lead to reports that made policy
recommendations. The review is an analysis of
evidence. The first six reports, which I hope will be
published before the recess, will demonstrate this.
They will summarise the evidence and the balance of
evidence put forward by those who have responded
on those areas of policy. The reports will highlight
some of the tensions and some of the political choices
that have to be made.
For example, the report on taxation—I am not giving
too much away—will flag up the fact that, while there
is an interest for multinational business in having
corporate tax arrangements determined on a more
European basis, because it makes for fewer
transaction costs, ease of doing business and
predictability, that has to be set against the cost to
tax sovereignty and control over revenue by national
Governments. There is a political choice that parties
seeking to form a Government have to make in that
case.
The reports will, we hope, then serve as a quarry from
which individual political parties and others will draw
detail and so on in the way we do with any other JHA
measures that come forward.
Q547 Mr Clappison: But with a yes or no answer, it
does sound as though it does, yes, fall within the
review of competencies.
Mr Lidington: Yes, it does. If people submitting
evidence want to comment on that, they are free to do
so. What the Lisbon treaty does is provide us with a
binding timetable within which these decisions have
to be resolved.
Q548 Mr Clappison: It is quite up to a person to say
“no”, and not opt in to any of it?
Mr Lidington: It is open to people to say that, if they
wish to.
Q549 Mr Clappison: Indeed, that was the reason
given by the previous Government—the absence of
justice and home affairs—as to why it was
unnecessary to have a referendum on the
Constitutional Treaty, because it was said that made it
very different.
Mr Lidington: Though I am tempted, I think it is
probably best I do not get drawn into going over the
old battleground.
Q550 Chair: No doubt you would not want to
answer a question about the rumours going around
that it is the intention of the Government to opt back
in on the European Arrest Warrant?
Mr Lidington: I tend not to comment on rumours. It
is better that we wait for the announcement to take
place.
Chair: As Francis Bacon said, rumours are like bats:
they fly in the dark.
Q551 Jacob Rees-Mogg: I want to ask a very simple
question, to which I think I know the answer. If we
opt out, what we have opted out of ceases to be, from
our point of view, a European competence. Therefore,
if we opt back in, do any of them engage the 2011
Act?
Mr Lidington: The answer to the second question is
no, because the 2011 Act is about future treaties or
amendments to treaties, with a certain number of
specific exceptions. This is not an amendment to the
treaty. It is the exercise of a duty that we have that is
within Lisbon. It is not the case either that something
we opt out of ceases to be an EU competence. Opting
out of something means that, when that pre-Lisbon
measure at the end of 2014 is subsumed into the
post-Lisbon acquis, we are outside its scope. It is open
to the Commission, in accordance with Lisbon, to
bring forward in the future a new initiative covering
an area of criminal justice or policing policy where
we have opted out of a pre-Lisbon measure. As that
is a new measure, though, our right to decide then to
opt in or out is completely untrammeled at that point.
At that point, we would look at that measure on its
merits; our legal advisers would trawl through the
detail and so on in the way we do with any other JHA
measure that comes forward.
Q552 Mr Clappison: It is slightly misleading to talk
about this merits business, because the purpose of the
Justice and Home Affairs Charter is to create a
European area of freedom, justice and security. Insofar
as we opt in to any of it, we are submitting ourselves
to the European area of freedom, justice and security
and the jurisdiction of the European Court of Justice.
Mr Lidington: A lot depends on what one thinks is
the significance of an area of freedom, justice and
security. There are certainly those who want to have
a common system of criminal justice and policing
throughout the European Union. I do not think there
are many in the House of Commons of any political
party who want to go down that route: there are a few enthusiasts, perhaps, but the common law system in England is something that most English MPs would ardently defend. What is the case is that, as a Government, there are some post-Lisbon measures where, when we looked at the detail, we did not believe that our opting in would compromise our right to make our own arrangements—we were not losing important powers—and that opting in would bring us advantages in terms of being able to fight crime more effectively in an age when criminals are able to operate much more freely across national frontiers.

Q553 Mr Clappison: I understand that is the purported justification of it, but it remains the case that the country is being submitted to the European area of freedom, justice and security. We could argue whether or not this is a good thing, but this is the purpose of it. You need to set that purpose out, rather than try to pretend this is just a piece of fine-tuning and opting in on a piecemeal basis.

Mr Lidington: It depends what is meant by that phrase about area of freedom, justice and security.

Mr Clappison: I rely on the words in the Treaty, which I think are quite clear. I have not got them in front of me, but you and I are familiar with them. We might as well put them in front of people and let people decide.

Chair: We will leave the exchange at that point.

Q554 Jacob Rees-Mogg: In terms of opting back in, is it open to the Government, instead of doing so under the auspices of the Treaty, to opt in on a bilateral agreement with the European Union covering these areas, and therefore not having the matters justiciable in front of the European Court of Justice?

Mr Lidington: If we opt out of measures, then, yes, for many of them we would certainly have the option of seeking to agree bilateral arrangements. With 133 measures, it is impossible for me to give a definitive answer here on the options for each of those, because the arrangements would vary. It is also not clear, and it may vary from one measure to another, whether any such bilateral agreements would need to be with individual member states or with the EU collectively.

The view of other member state Governments is actually different, in that it would say, it would have to be bilateral; some would say, since Lisbon, we have given up a right to have bilateral agreements, so it would have to be with the EU.

Q555 Jacob Rees-Mogg: I was thinking obviously that we are in the process of a US-EU free-trade agreement. The EU can negotiate agreements where it has competence. It does not have competence in these areas under the existing treaties. It would be highly preferable, from a UK point of view, to maintain our future independence and, if we did want to opt back in to any, to do it as a bilateral arrangement, which are outside the structures of the ECJ.

Mr Lidington: The bilateral agreements come in as an alternative for any measure we decide to opt out of permanently.

Q556 Jacob Rees-Mogg: We opt out of all of them if we opt out of any.

Mr Lidington: We opt out of all of them. We could decide to stay opted out of all of them and to seek bilateral agreements instead. That is Mr Rees-Mogg’s preference. We could decide to exercise the mass opt-out, and then to opt back in to a number of EU measures, which would then, of course, be subject to the jurisdiction of the ECJ, and so on.

Jacob Rees-Mogg: And would be permanent, whereas a bilateral agreement could be renegotiated.

Q557 Mr Clappison: Croatia is very, very important. Are you happy with the outcome of the process of Croatia’s accession as far as issues such as corruption and rule of law in Croatia are concerned, which were raised and made the subject of monitoring?

Mr Lidington: It is a “yes, but”. I am happy with the progress that Croatia has made. What Croatia has managed to do in even just the last four years in terms of judicial reform, anti-corruption, police reform and so on is a remarkable achievement. Yes, Croatia needs to do more, but the Croatian Government is committed to take this forward. Our view was that they had met the tests that were required.

The “but” is that not just the UK but other member states and the Commission too recognise that, while the creation of Chapter 23 had been a significant advantage, in which the EU showed it had learned something from the experience with Romanian and Bulgarian accession, it had been opened and negotiated too late for Croatia to have had sufficient time over a number of years to develop a track record of progress. Therefore, with Montenegro’s negotiations, a new accession sequence has been adopted. With Montenegro and for any future candidates for membership, Chapter 23 will have to be addressed first. The very first chapter opened will be on human rights and rule of law, so that those countries have time not just to change their laws and implement changes but then to show, as other chapter negotiations continue, that they are simply establishing, year by year, a good track record.²

Q558 Mr Clappison: Do you think the post-accession monitoring has been more successful for Croatia than it was for Bulgaria and Romania?

Mr Lidington: Croatia is not subject to a co-operation verification mechanism in the same way as Romania and Bulgaria were. Our judgment, like the Commission’s, is that Croatia has managed to do a great deal further than either Romania or Bulgaria had done at the point when they were admitted as members.

Q559 Chair: We now move on to the last few questions. One very important issue, I think you appreciate, is in respect of the EU trade negotiations.

You may know that I asked the Prime Minister a question about this. I also asked you a number of questions in the European Standing Committee some months ago about the manner in which these were being conducted. When I asked the Prime Minister, bearing in mind that the European Commission has effective control over the framework, I asked him

³ Witness correction: With Montenegro and for any future candidates for membership, Chapter 23 will have to be addressed among the first. One of the very first chapters opened will be on human rights and rule of law, so that those countries have time not just to change their laws and implement changes but then to show, as other chapter negotiations continue, that they are simply establishing, year by year, a good track record.
about the areas and the matters that would be covered, pointing out that it is an exclusive competence under the Treaties and that they would be of huge significance. The question is to what extent we would have access to the negotiated mandate, as agreed by the Foreign Affairs Council, so we are told last Friday. The Prime Minister answered to say he would do what he could to help; I think those were the exact words.

As the Committee is now reviewing how EU trade negotiations are conducted, and how the Commons can be both kept informed and influenced, the point is that, because the only depositable documents are published at the end of negotiations, Parliament actually does not know what is being included, what areas and what the terms of reference are. Therefore, what we want to know is: are these negotiating mandates and revisions all considered too confidential to deposit, despite the importance that is being attached to these by the Government, by the EU and by other countries? Is there a way around this other than relying on ministerial goodwill to keep us informed?

Mr Lidington: The Prime Minister, I think, will be writing to you, Chairman, following your exchange in the Chamber. I do not want to steal his thunder, and I think it would be useful for you to set out to the Committee, if you would find that helpful, as well. Yes, this is an exclusive EU competence. The Commission goes away and conducts the negotiations on the basis of its mandate and then comes back and informs the Council of the progress of those negotiations. We and other member states, including Germany, have said to the Commission that, above all in dealing with the United States and in trying to negotiate such an ambitious and wide-ranging agreement, it is in everybody’s interests that the Commission work closely with Member States, because we all have our networks of contacts in Washington and at state level, where we can assist Commissioner De Gucht and his team without detracting from their role here.

The Commission has committed itself to keeping the Council and the European Parliament informed about and involved with developments. The job of Ministers here will then be to be in touch, yes, with Parliament, and also with key interests in British industry, about provisions that the Government needs to support.

My understanding is that drafts or sections of trade agreements are not depositable. They are not caught formally by the scrutiny process. I do not think I can predict exactly what the best way forward would be. It would depend on the progress of negotiations, but probably at the start, at any rate, the best thing would be for the Committee to take up Lord Green’s offer and to discuss with him, as the Minister directly responsible, how the Committee could best be kept informed about the key developments in a negotiation that is likely to take at least a couple of years.

Q560 Chair: There are Cabinet Office guidelines on some of these matters. I refer, for the record, to paragraph 235, relating to draft negotiating mandates, which says that “Departments should provide the Chairmen of the Scrutiny Committees with details of negotiating mandates as soon as they have been approved. This should include mandates for negotiations with third countries and international organisations and also mandates for negotiations within international organisations without breaching confidentiality.” We understand all that. I do not think I need to read out the entire paragraph, but it does say that “Departments should ensure that the Committees are kept informed as much as possible about the scope and development of negotiations prior to signature and/or conclusion of an agreement” and so on. Of course, because these are so important and the question of qualified majority vote comes in, how would you anticipate in principle the manner in which qualified majority voting would bite in the conduct of these negotiations as they progress?

Mr Lidington: I certainly will not go over the whole text of the Cabinet Office guidance. I do need to stress, in the passage about providing negotiating mandates to the Chairmen of the Committees, the phrase “without breaching confidentiality”, which is important.

Chair: It takes us back, in a way, to the limited question that we were talking about before.

Mr Lidington: It is exactly that question again. All the trade agreements that I have seen happening involve, in the end, a compromise, obviously, between the EU and the third country involved. That has been the case with Korea and Singapore, the two that have been successful. I think you need to come to the Committee, if you would find that helpful, as well.

The Prime Minister answered to say he would write to you, Chairman, following your exchange in the Chamber. I do not want to steal his thunder, and I think it would be useful for you to set out to the Committee, if you would find that helpful, as well. Yes, this is an exclusive EU competence. The Commission goes away and conducts the negotiations on the basis of its mandate and then comes back and informs the Council of the progress of those negotiations. We and other member states, including Germany, have said to the Commission that, above all in dealing with the United States and in trying to negotiate such an ambitious and wide-ranging agreement, it is in everybody’s interests that the Commission work closely with Member States, because we all have our networks of contacts in Washington and at state level, where we can assist Commissioner De Gucht and his team without detracting from their role here.

The Commission has committed itself to keeping the Council and the European Parliament informed about and involved with developments. The job of Ministers here will then be to be in touch, yes, with Parliament, and also with key interests in British industry, about provisions that the Government needs to support.

My understanding is that drafts or sections of trade agreements are not depositable. They are not caught formally by the scrutiny process. I do not think I can predict exactly what the best way forward would be. It would depend on the progress of negotiations, but probably at the start, at any rate, the best thing would be for the Committee to take up Lord Green’s offer and to discuss with him, as the Minister directly responsible, how the Committee could best be kept informed about the key developments in a negotiation that is likely to take at least a couple of years.

Q561 Chair: How do you evaluate the exclusive competence that overrides all other bilateral agreements in the field and zones in question with our bilateral arrangements, for example, with other emerging markets in the Commonwealth and, in fact, throughout the world? You understand, I am sure, that by having an exclusive competence in the hands of the EU, where we are, to use the Prime Minister’s and the Chancellor’s expression, in a global race, where competitiveness is a key, we are in a special situation vis-à-vis Commonwealth countries where there are emerging markets. We have a common language; we have a common commercial law in many respects. I was talking to the Prime Minister of Malaysia yesterday about some aspects of this. He is here, as
you know only too well, seeing the Prime Minister today. The question therefore is to what extent we might be excluding ourselves as the United Kingdom from very important and potentially prosperous deals with other countries throughout the Commonwealth, emerging markets, Africa and the rest.

Mr Lidington: It is ultimately a political decision to be made. The arrangements under the treaties that give exclusive competence to the EU and the Commission for international trade negotiations mean that we, like Germany and like France, cannot simply go ahead and try to negotiate our own bilateral trade deal. At the same time, those treaty arrangements make available the collective leverage of the EU and 500 million people, rather than the UK and 60 million people. If I look at the United States, they have been pretty clear that they were interested in doing a deal with the EU simply because of the sheer size and scale of the EU marketplace. They would have been, I think, less interested in separate bilateral arrangements with even the biggest member states.

Chair: I understand that. We need to move on to Neighbourhood Policy action plans and the EUSR’s. Finally, I will say that, historically, for the last 400 years, the United Kingdom has found itself, through its capacity to trade effectively, able to do so without necessarily having this enormous structure within which to do it. Perhaps we could leave it at that.

Q562 Chris Heaton-Harris: You have been very generous with your time, Minister, and I shall endeavour to be very quick on these two. The first is on European Neighbourhood Policy action plans and the EUSR’s. Finally, I will say that, historically, for the last 400 years, the United Kingdom has found itself, through its capacity to trade effectively, able to do so without necessarily having this enormous structure within which to do it. Perhaps we could leave it at that.

Mr Lidington: No. The problem with action plans is that they cover such a wide range of documents. They are not defined in the treaties in any way. Sometimes action plans can be documents that are politically important; they will define the EU strategy towards a particular country or region of the world. We do try in Government, where that is the case, to submit them for scrutiny. If they are issued as Council decisions or Commission communications, first of all, they are disposable under the scrutiny process anyway. The enhanced working relationship, which was communication, and the joint communications of the EAS and the Commission on the counter-terrorism action plan for the Horn of Africa and Yemen were caught by scrutiny.

You also get some things described as action plans that are frankly much less significant. When a term is not defined in any way in a treaty or law, I would be reluctant to give a blanket commitment to make it subject to scrutiny in all circumstances. What I would prefer is a working culture in which the Government really does try to ensure that, where something is of political significance, it is drawn to the attention of the Committee. Where those action plans take the form of Council decisions or Commission communications, they are caught anyway, and we will continue to supply those to the Committee.

Q563 Chris Heaton-Harris: Moving swiftly on to a slightly more contentious area, the European External Action Service and the European Special Representatives, we understand that you have written on no less than three occasions so far to the High Representative about the need for timely submission of Council decisions, such as those renewing the mandates of these EU Special Representatives. The latest round of mandates and budgetary renewals has been poorly handled by the External Action Service again, with too little time allowed for parliamentary scrutiny. Given that your letters so far seem to have had little effect, what else can be done in this area to improve the efficacy of the External Action Service?

Mr Lidington: It does require a cultural change at the External Action Service. What happened this year was profoundly unsatisfactory. I was hoping to be able to speak to Baroness Ashton directly. Because of our respective travel agreements, that has not proven possible. I have written to her, and I think we are sending a copy of the letter to the Chairman. Of course, now we have a firm commitment to an October discussion of horizontal issues affecting EUSRs, that should be the occasion, amongst other things, to have a really hard look at this process and to ensure that the EAS builds into its working culture and its preparatory arrangements a proper respect for national scrutiny processes. The Committee will see, when my letter is circulated, that I have made just one constructive suggestion: if the EAS would like to send officials to London and talk to our people and parliamentarians involved in the scrutiny process, trying to internalise the importance of this and the timescales involved, that might help to shift the working culture.

It was disappointing. In fairness to Lady Ashton, she has said openly that this year’s episode has not been the EAS at its best. She has said that she started to think about the latest batch of proposals on Special Representatives as far back as January, but no information was given to member states until her letter of 3 May. The reason why I did not instantly write to the Committee at that stage was that there was a unanimous response, by all 27, to disagree with the High Representative’s proposals, so they were clearly not going to come forward in an unaltered form. Alternative proposals were put forward. The EAS did not provide a response to those until 7 June. We got to 7 June. Lady Ashton came herself to the PSC and said she was not going to try to stand in the way of what the Member States want. At that point things moved forward quickly and a compromise package was agreed. That went forward to RELEX on the same day for detailed discussion, but inevitably a lot of time had been lost in the interim.

I was very fed up with the fact that we had been asking for a long time for this discussion of horizontal EUSR issues, including not just that scrutiny but salary levels and other arrangements. There had been a commitment to have one this year, but no date. I said at the end of the day that my officials should tell the EAS that, until I got a firm date and a commitment locked down for a time in the autumn, I was simply going to block any agreement on renewal of EUSRs. We have now got that for October; that was then agreed fairly quickly. We will continue to work on this. It was not a happy episode but, as I say, in fairness to the High Representative, she has acknowledged that mistakes were made at their end.

Chair: I have one final thought, because this is probably the last time we shall be seeing you before
we finalise and publish our report, which will be in the autumn. To put it simply, the reason for this inquiry goes to the heart of our Standing Orders and the purpose of scrutiny in enhancing our democratic engagement with the whole process of European legislation and its impact on the United Kingdom. The question of who governs Britain and how is always part of that. It is not just a process question, although that inevitably does crop up. We are extremely glad to have had this extended session with you. It has been a very good exchange, if I may say so. I am grateful to you for coming and for the openness with which you have addressed the questions, which are part and parcel of what we now have to finalise. Thank you very much for coming.
Wednesday 4 September 2013

Members present:
Mr William Cash (Chair)
Andrew Bingham
Julie Elliott
Chris Heaton-Harris
Kelvin Hopkins
Chris Kelly
Jacob Rees-Mogg
Linda Riordan
Henry Smith

Examination of Witness

Witness: Professor Damian Chalmers, Professor of European Union Law, London School of Economics and Political Science, gave evidence.

Chair: Good afternoon, Professor Chalmers. It is very good to see you and thank you for coming along.

Professor Chalmers: Thank you. It is a pleasure.

Chair: The first set of questions that we are going to deal with, as part of our inquiry, is on democratic legitimacy and the role of national Parliaments. I call Jacob Rees-Mogg.

Q564 Jacob Rees-Mogg: Thank you, Chairman—and, indeed, professor, for coming to see us. What is your assessment of the various proposals being floated by Foreign Office Ministers and the Prime Minister about the future relationship of national Parliaments to the EU institutions, and how does this debate link to the more fundamental question of sovereignty, on which you have written and which was the subject of an inquiry and report from this Committee in 2010?

Professor Chalmers: As far as I am aware, the proposals I see are still at a very early and a not very detailed stage. The central line of interest at the moment seems to be to extend the so-called yellow or orange card procedures and to turn them into a red card procedure, so that if some quorum of national Parliaments opposed a measure on the grounds of subsidiarity, that would be the end of it. At the moment, of course, under the yellow card, the Commission is just required to review, and under the orange card, when half of them do, there is the possibility for the Council and the European Parliament to veto the measure.

My view on that is that it is welcome, but probably not sufficient. If you look through the annual reports that the Commission has done on its relations with national Parliaments, the central challenge has not really been that somehow the Commission might get a card of some kind and then take the measure forward, notwithstanding national parliamentary opinions. It is almost inconceivable it would do that. First, it would just be such bad politics, and the second thing is that they would almost certainly not have the relevant majority in the Council. Not de jure but de facto; there is something close to a red card whenever any of these things are shown.

The first problem is that the thresholds are very high—it is quite difficult for national Parliaments to co-ordinate. If one looks at the last couple of years, we have had one case on corporate tax where there were nine parliamentary opinions and a few others where there have been five or six. If one turned it around and thought of the number of cases when there had been between five and nine Governments voting against something on the Council, they would just not have got through. It is as simple as that; there would have been some attempt at consensus. There is a collective action problem. That is the first thing that does not address, for me, the nub of the matter.

In the paper I wrote, I saw to my mind a more fundamental problem. I really do not like the idea of Parliaments being veto players. This is not my understanding of the traditional role of Parliaments. They have to say “yes” rather than actively saying “no”. For a variety of reasons, I would prefer that. This is the first thing we expect as citizens: that normally Parliaments engage only when they see there is a case for collective action. The thresholds for saying no are always much higher than for actively saying yes. If there is no parliamentary enthusiasm for doing something at an EU level, my own view is that it should not be done at that level. That is pretty much the thrust of the treaty, if one looks at both the subsidiarity and the proportionality principles.

Q565 Chair: Are you saying that you think that the way in which the system is functioning at the moment is distorted in favour of EU institutions as against national Parliaments, when one has to consider that national Parliaments are the prime representatives in terms of general elections in countries, at which voters make decisions? Is that really the essence of it?

Professor Chalmers: Your question is a more general normative one. If one was looking at the treaties, of course, who they say represent the member states are not actually the national Parliaments. They are represented through the Council and the European Parliament, which are not veto players. This is not my understanding of the traditional role of Parliaments. They have to say “yes” rather than actively saying “no”. For a variety of reasons, I would prefer that. This is the first thing we expect as citizens: that normally Parliaments engage only when they see there is a case for collective action. The thresholds for saying no are always much higher than for actively saying yes. If there is no parliamentary enthusiasm for doing something at an EU level, my own view is that it should not be done at that level. That is pretty much the thrust of the treaty, if one looks at both the subsidiarity and the proportionality principles.

My own view is that, historically, this has been one of the challenges of the EU. It is not so much about centre/periphery—Europe versus nation state—as Executive versus national Parliaments. A classic example is the flexibility provision, which started off as 235, became 308 and is now 352. This allows the Union pretty much to do what it wants, but it has always been subject to the veto. The argument was always that that should be enough. If one national Government out of 28 dislike it, that would be it. Historically—not so much in recent times—it has
Parliaments do not really express a view on and that, The reality is that a lot is agreed in the Council that example of that. The issue with that historically is that Council. Denmark is always given as the salient Government require a mandate from the national Parliament-Government relations, where the national express their positions, some states of course take this majority voting. If we, even on issues of unanimity, identify, the role of the Commission and qualified just go back to the supranational elements that you might be seen precisely as a handmaiden of Council. Denmark, because historically it has had a coalition Government. In some ways, if it could review and just suggest, almost like a reviewing chamber—and this is why it has always been argued that the House of Lords has been particularly effective in its observations—then that works a little bit better, for the reasons that you have given.

My own feeling is that that might be the case, but it is a rather fatalistic role for the potential of national Parliaments and rather overlooks the possibility for parliamentarians to take an independent pride in what they do as parliamentarians. That is the first thing. The second thing is that, even if that argument was right, the consequence of it would be the Committee would become a lot more powerful. As Government and Opposition began thinking, “This is something we really have to stake,” it would become a much more high-profile Committee. Even if it was stacked by the political parties, there would be a lot more salient debate, and there might be more high-level reporting and issues might get aired. That is a little bit, one could argue in a rather cynical way, what happens sometimes in the House of Commons when there are large majorities. The value of it is not just independent representatives, but the quality of debate that takes place. I would still argue for perhaps a slightly more mandated system, notwithstanding our constitutional traditions.

Q567 Jacob Rees-Mogg: I just want to follow up on the various coloured cards and Parliament exercising them in a specifically UK context. I was interested by what you were saying: that if five, six, seven, eight or nine Governments opposed something, it would not go ahead anyway. Therefore, clearly this use of cards is secondary to that. Obviously, in our system, the Government command a majority in the House of Commons. There is no way the House of Commons can issue a red card if the Government of the day are against it and have already agreed the position. Is it, in a sense, window dressing to say that the UK national Parliament will be given this wonderful new enhanced role? In fact, it is not a role we can exercise without the Executive supporting it, because that is how our constitutional system works.

Professor Chalmers: That is certainly an argument that has been put by a lot of scholars. I would make a couple of points in relation to that argument. Scholars have written about it and said, when one thinks about it, one has to look at the position of party politics in the relative political systems. They say it worked well in Denmark, because historically it has had a coalition Government. Certainly one of the arguments that has always been given for why we do not have a mandate system here in the United Kingdom is that Parliament might be seen precisely as a handmaiden of Government. In some ways, if it could review and just suggest, almost like a reviewing chamber—and this is why it has always been argued that the House of Lords has been particularly effective in its observations—then that works a little bit better, for the reasons that you have given.

Q568 Chair: In your paper on democratic self-government you say: “The institutions with most credibility to verify whether an EU measure adds democratic value are national parliaments. They are the central fora for democratic contestation within Europe and, as they lose by EU competence creep, do not have the same reasons as EU institutions to be passive about EU law.” Now, one of the measures— Jacob Rees-Mogg has just referred to this—mentioned by the Foreign Secretary and the Minister for Europe is this so-called red card or emergency brake. We do know that, in the context of the Bloomberg speech and all the thinking that has been...
going on about this, and the issues of democratic legitimacy, there are increasingly concerns about the process, reflected for example by the Barroso blueprint, and what Viviane Reding and others have been saying in the European establishment, for more and further European integration.

This red card or emergency brake would quite clearly be a reaction to this increasing degree of integration, which the Bloomberg speech in a way suggests does not have the “demos”, as the Prime Minister put it. He put emphasis on the importance of national Parliaments being the root of our democracy. The Foreign Secretary calls it a red card or emergency brake but, considering the number of national Parliaments that are given the right to block legislation, how would that operate in practice, do you think? What would “the right to block legislation” mean in practice, in your feeling?

Professor Chalmers: I will just repeat what I opened with in relation to Mr Rees-Mogg’s point, which was that, in practice, we have something close to a red card already, because of the way voting is stacked up in the Council. If a third or a quarter of national Parliaments, or half, already stated they dislike a thing, it is highly improbable we would get the necessary majorities in the Council, so it would not change the outcome—assume you did. If you looked to yourself in part, is the thresholds. In part, it is Parliaments saying “no”.

I would raise a further issue that has been raised by some colleagues. I understand the Barroso initiative and what Viviane Reding is saying. They are unlikely to affect the EU anyway. I would be sceptical about them actually winning the necessary referendum. Aside from that, it is not clear it is for new legislative powers; if you look at what they are looking for, it is very much national Parliaments holding the ECB to account. However, there is another problem about the red card that might come back if it was to be done for a treaty amendment. I personally would not favour a treaty amendment anyway.

Some people have bemoaned the fact that national Parliaments have used this process in article 7 to look at things beyond subsidiarity. They said the only thing they are really meant to look at is whether a proposal meets the subsidiarity test. National Parliaments have not done that; they have looked more broadly at whether it is in their interests or not. That has been the general practice. There is a danger that if you formalise this, if you are not careful—depending on how it is worded—it will become an issue. The Commission might take a measure—one once again there would be different politics behind it—and say, “You have broken the terms of the compact, because you promised only to look at subsidiarity and you have looked at something broader.” The challenge with the subsidiarity principle is that it is quite a narrow functional principle, in my view.

Let me just give you one example. I speak as someone who has very liberal views—probably much more liberal than most of those in this room—on migration. If you had the subsidiarity principle, the EU would be quite justified in doing anything that facilitates free movement. It is, of course, very difficult for any state to do that by itself. The terms of reference for the legislation or the debate are purely more migration. Of course, if one was having a wider debate about it—issues about pressure on labour markets and public services—there would also be other issues that would be taken into account. What the EU would say is, “Are we doing what is necessary to realise this one goal?” It is a functional test. I believe—even though I actually support that goal quite strongly—that we would want a broader role for national Parliaments than just generally deciding, “Is this something we like or not?”, rather than tailored to the objectives of a particular treaty.

Q569 Chair: That brings us on to the question about the thresholds, in the sense that there are those who say there should be a threshold amongst all national Parliaments. The question is whether, as you put it in your own paper—I will quote from that again—“Individual national parliaments should also be able to pass laws disapplying EU law where an independent study shows that EU law imposes higher costs than benefits for that member state.” Of course the principle there is the question of disapplication. We already have a competence review that is going on across the board.

What that raises is the question—which is a fundamental constitutional issue—about whether or not an individual Parliament could make a unilateral decision to disapply the law. Of course, the European Communities Act itself is a voluntary Act. We entered into it in 1972, albeit on the basis that a 1971 paper, by a very narrow majority, which specifically stated that the veto must be retained in the national interest, because to do otherwise would be contrary to the national interest. It went further and said it would endanger the very fabric of the European Community, which is an interesting addition to the dimension. Given that that is the constitutional position, in what way would the unilateral application of a disapplication work, in your judgment, and what would be the mechanism, assuming that you would have to have primary legislation in order to pass it?

Professor Chalmers: What is in my paper is a proposal; it is obviously currently not the situation. Chair, as you well know, the current situation, both in English law with Thoburn and also the Court of Justice ruled repeatedly this year in Malone—

Chair: And there is Macarthy v. Smith.

Professor Chalmers: Yes, there is a whole weight of things, particularly since Factortame, which gives primacy of EU law over national law. I argued in my paper a rather different legal argument on article 4(2) of the Treaty of Lisbon, which requires EU law to respect national state identities “inherent in their fundamental structures...inclusive of regional and local self-government”. This provision—which was, in so far as it was justiciable, new to the EU treaty after Lisbon—offers new ways of thinking about this. This is not just some academic who decides to say this to provoke argument. This is the position, it has to be said, of the Polish constitutional tribunal and the German constitutional court. They made it very clear in their judgments on whether those two states could accede to the Lisbon treaty that this principle was fundamental and that primacy of EU law had to take effect.

Now, what those two states say, as well as France, the Czech Republic and, I think one could argue, Italy, is that there are certain areas of national activity that EU law just will not have primacy over. They create a sort of division of competences, if you want, irrespective
of the EU treaties. That is how they say it. My argument is that that is not a good way of looking at it; there is nothing in the provision that says that. A better way should be to think about the structures that you have that are your fundamental democratic structures in which both the German and Polish courts say is democratic self-government and national legislatures, and that therefore there should be the possibility for acts of national legislation to take precedence over EU law because of this provision. Those are the consequences of what the German and Polish constitutional courts say.

Q570 Chair: It is already inherent as well, surely, and not only in terms of what you are saying. Is it not inherent in the right of the United Kingdom Parliament anyway—we took evidence, by the way, on this in our EU sovereignty report a few years ago—to pass any legislation notwithstanding the European Communities Act, if we chose to do so? You could disapply it. In fact, I just mention this—you may not know this—on occasions amendments have been put forward that have been accepted by the House and have been moved with that formula in it, and indeed have been voted on, and on a three-line whip, in the case of the Conservative party before the general election.

Professor Chalmers: Chair, you know better than I. You are absolutely right: of course it is Parliament’s right to amend or change the European Communities Act—the 1972 Act—as it sees fit, and the EU 2011 Act also makes that very clear. My issue as an EU lawyer is a slightly different one. It is not whether there is that possibility, which there clearly is constitutionally. Traditionally, the position has been that, if you do that, it might put your membership of the Union at risk. This is historically one of the things that states, since the Copenhagen criteria in 1993, have had to put in place. The argument was that you can do this, but it is not compatible with the existing EU constitutional settlement, i.e. being a member of the EU. My argument is that it is. You could do this and there really would not be a problem for EU membership. In fact, EU law allows it. It is a slightly different argument from that one, because it is saying that, actually, EU law allows it, irrespective of what the status of EU law is.

Q571 Andrew Bingham: On the experience of the yellow card procedure, what does it tell us about how national Parliaments act in practice when given new powers under the treaties?

Professor Chalmers: When one looks at the take-up of the yellow card procedure, one has to go back not just to Lisbon, but to 2006 and the so-called Barroso initiative, when there was an informal commitment by the Commission to listen to national Parliaments. What has happened is that, every year, the take-up has got higher, but it is very asymmetric. The Parliaments of all states other than one submitted observations last year: the Portuguese and the Italians were the highest, if I remember, by a long way. I do not have the figures to hand, but I think that Parliaments from about seven states made 15 or more observations.¹ One can also see this in the length of the reviews. It was chambers like the French or Czech Senates or the House of Lords here that tended to be most active. We will have to wait and see how it stabilises, but it is still going up.

Q572 Kelvin Hopkins: Professor Chalmers, the Minister for Europe recently spoke in the debate in Westminster Hall about the possibility of introducing some form of “own initiative” procedure for national parliaments. Is this similar to one of the limbs of your proposed test of democratic responsiveness?

Professor Chalmers: Yes. I did not know that, but yes; I think it would be a good thing. My own view is that the biggest challenge for the EU—and this is irrespective of what happens with the euro area—is not to develop another 10,000 instruments. No one is suggesting that. If anything, the number of instruments has gone down in recent years. It has been rather stable, but it is how it manages its existing legislative docket. At the moment, the only person who can change those things is the Commission. It seems to me that it would be a good thing if this monopoly was broken up. This is not a national point or an EU point; I just think that Parliaments should be able to propose amendments to legislation, repeal the legislation or even propose new EU legislation. I would make one further point on this: the success of the European Parliament, if one likes to put it this way, was precisely because of that in the early 1990s. Anyone who is denigrating the European Parliament too much has to explain why so many of its amendments were accepted by the national Governments when you needed a qualified majority. According to some studies, it was over 80%. The reason why so many amendments were accepted was because the only place you could go, if you did not get something in the Commission’s proposal, was to the European Parliament and get it changed. What happened was a lot of lobbyists and national Governments who did not like what was in the Commission’s proposal and had lost would go to the European Parliament, which would then propose amendments that had to be accepted in the Council. I think having a third opportunity for that, where national Parliaments could suggest amendments or require proposals to be submitted, would be very welcome.

Q573 Kelvin Hopkins: I have a long-standing view that democracy is something that comes upwards, not downwards from the top. The procedures of the European Union bear some similarity to democratic centralism, in the sense that things are decided centrally and fed down, and yet they get acquiescence by Governments, Parliaments and whatever. Could it not be quite threatening to the European Union if national Parliaments chose to push things that it did not like? Supposing we had a left-wing Government who wanted to decide that some utilities should go back into public ownership, and the European Union said, “No, no, this is against market views.” That would be interesting; would it not?

Professor Chalmers: Two things: first, the fact that things are threatening is not necessarily a bad thing. I just think that is what democratisation is about. The second thing, in my proposal—and I understand it was also in the Minister’s proposal—is that it is only a

¹ Note by witness: In response to Q571 from Mr Bingham, I said I did not have the figures to hand of national parliaments who made 15 or more reasoned opinions a year but I thought it was ‘seven or eight’. In fact, the numbers are nine for 2012, ten for 2011, six for 2010.
right to propose. If you think about it at the moment, we give the right to propose to all of yourselves. It is much more widely dispersed in Westminster through the possibility of a private Member’s Bill than these proposals suggest. It still has to get through the national Governments and, if they say no, all they have to do is give their reasons why it is no, which does not seem to me a bad thing.

Q574 Kelvin Hopkins: I have had the honour of accompanying the Chairman on a number of occasions to COSAC meetings, and there is a sense there that the Commission and indeed the European Parliament are slightly nervous about COSAC, if COSAC starts to propose things with all the parliamentary representatives. They want to play down COSAC and not play it up, whereas we want to play it up, I think.

Professor Chalmers: I cannot speak to that and I think you would have to talk to commissioners, MEPs or Commission officials. It is interesting, both with the European semester and what is happening in the euro area, that the Commission is anticipating a much greater role for national Parliaments. Of course, the Barroso initiative, in my opinion at least—in my judgment—was reasonably sensitive to them. Of course, if some of these proposals take off, there would be something that acts a bit as, if you like, a political competitor to the Brussels sphere but, once again, I do not actually see that as bad for the European Union.

Q575 Chair: In the context of COSAC, the Irish presidency held a debate on democratic legitimacy and I was invited to respond on behalf of the views that many people know I hold on the question of the issues that we are discussing now. In fact, Commissioner Viviane Reding was invited by the Irish presidency to take part in that discussion. She sent a video of her views on movements towards a federal system. I put forward the arguments as I did. Did you know that the COSAC debate is increasingly engaged in this issue of democratic legitimacy, and that these debates are in fact made public through webcasts and things of that kind? Were you aware of that at all?

Professor Chalmers: I read all the COSAC reports and find them quite interesting. I was not aware of the webcasts, no.

Q576 Chair: The Irish did hold one. I do not know whether it is going to continue in other sessions, because there is a new session coming up in Lithuania. I just mention the fact that the essence of what we are discussing today, in terms of principle, is being debated. The question of where the national Parliaments stand in relation to the EU is a very relevant issue at the moment. Coming back to the primacy of national law, your argument about article 4(2) is very interesting but, so that we can get a better idea of its strength and value, could I ask you two questions on it? How would you argue for the European Court of Justice? Secondly, how do you think the European Court of Justice would be likely to decide it? There are all these cases that go back to 1963 and Van Gend en Loos, and there is a whole body of assertions of constitutional primacy, in the language of the European Court and in the decisions of the Court, over the constitutions of member states. How do you think all that would work out in practice?

Professor Chalmers: Chair, if you will forgive me for answering your question in a slightly indirect way, I would take a slightly different tack. The reason for this is it is not clear to me that the Court of Justice has a monopoly over the authority of EU law—the relationship between EU law and national law. I think there are only, arguably, two states that believe that at the moment: Belgium and Luxembourg. I am not clear that any others do, if I look at the national constitutional courts. I would have to check that, but there is an overwhelming majority that do not. There are also two other things that lead me to that view, and these are once again quite technical legal arguments, but they are arguments that might play with Government lawyers.

First of all, through the Lisbon treaty, as you will be aware, the member states passed a declaration on the primacy of EU law. Now, if the member states—the Heads of Government—thought that it was not them but the Court of Justice that had a monopoly over this issue, it begs the question of why they passed that statement. It suggests that they thought that they had some authoritative position on this themselves—on this question of interpretation. It was not for the Court of Justice. You have that. You have the position of almost all the national constitutional courts. Thirdly, you have the wording of article 4(2), which uses the word “respect”. I do not see how you can respect someone by telling them what they are and that your word will always take precedence over theirs. That just goes against any semantics I have seen with that word. Those are the arguments for why the Court would not have a monopoly.

What I would suggest—and this is, of course, a very pompous and narcissistic suggestion—is that actually the best way to go forward would be a declaration on article 4(2) by the European Council, setting out how it sets in place the relationship between EU law and national law. As you will see with my proposal, it was not just disapplication of national law. The idea of being part of a community is that you consider the effects of disapplication on the citizens of other states, so I suggested this procedure where Parliaments of other member states could look at it and refer it to the European Council, if they were unhappy with it. Being part of a community requires you to think of the views of others and take them into account. There has to be some procedure. That would be my preference, but I think a European Council declaration would be the way forward.

Q577 Chair: Of course there are opt-outs and there is the process of enhanced co-operation, both of which indicate that there can be differences in the manner in which legislation is made part and parcel of an integrated system.

Professor Chalmers: Absolutely. Sorry, I had forgotten a point. This mechanism of declarations is not new. It was used, of course, with the Edinburgh declaration in relation to subsidiarity in 1993. The EU institutions use them all the time for all kinds of things. In terms of modalities of how states would want to give effect to national law or, according to my proposal, how it would be referred to, say, COSAC or national Parliaments, that would be very much a
matter for national law. There are constitutional traditions. The French have a constitutional council in a way we do not and, in my view, one should be respectful of that.

Q578 Chair: Section 3 of the European Communities Act 1972 makes an assumption that as far as the UK law is concerned, as it stands at the moment, we have to implement the interpretations of the Court of Justice. There would have to be some adjustment there, would there not?

Professor Chalmers: The basis of my argument is that a central mission of EU law is to respect the democratic identity of nation states. This means that when a Parliament says, “EU law is not for us,” this democratic identity provision says that that national law must prevail over other EU law. It is not a general, willy-nilly thing— a way to say, “We will apply EU laws in some cases or not.” The argument is it prevails unless the national Parliament says no.

Q579 Chair: Is this fundamentally because you believe that a democratic process should enable a national Parliament to be able to make a decision with respect to the laws of its own citizens?

Professor Chalmers: Yes, absolutely. Just in relation to your point about judgments of the Court of Justice, if the Court of Justice, for example, gave an interpretation that went against something that citizens of a state strongly believed in, citizens should have the right to pass an Act of Parliament that does not apply that ruling or that disapplies that ruling. Of course, the Czech constitutional court has already done that and no one batted an eyelid. It did it in relation to the system of pensions that they have in the Czech Republic and what rights they give Slovak nationals there. You would need mechanisms in place to ensure that the dislocatory effects are not too great on other EU citizens and you talk about those effects, in my view. The basic principle clearly is that our Parliaments are of a higher democratic pedigree and of a greater democratic tradition. There is the argument that Mr Hopkins has made of a preference for local self-government over more centralising mechanisms. They all point to that conclusion, when push comes to shove.

Q580 Chair: All this runs completely contrary to the assumption that is in all the European jurisprudential body of law that the acquis is sacrosanct and cannot be changed, except by unanimity of the member states.

Professor Chalmers: Yes, it does a little bit, but it is not contrary to many of the judgments of national constitutional courts. One has to reflect that, as I mentioned earlier in my evidence, constitutional courts in the Czech Republic, Poland, Germany and, to some extent, France and Italy have said that their law, whatever the treaty says, can prevail over EU law. That is the first thing. Of course, what has happened, if one looks at the academic literature, particularly in Germany, is that quite a lot of it now takes the position that EU law cannot prevail over the basic law. They see the basic law in a little bit of the same way that we would see parliamentary sovereignty. They take quite an analogous position.

Q581 Chair: How have national parliamentary scrutiny systems across Europe, in your judgment, kept up with the changes in the EU decision-making process since Lisbon? To give an example, there is the increasing significance of trilogues and first reading deals. We understand first readings have increased by as much as 80%.

Professor Chalmers: They are just under 80%—79.5%.

Q582 Chair: Thank you very much. The second question is whether the greater use of qualified majority voting, as another example, means that national Parliaments, even if mandated, can be outvoted.

Professor Chalmers: Briefly, there is a lot of interesting evidence on the trilogues coming through now. The challenge of the trilogue for national Parliaments and for all kinds of people was a consequence of enlargement that first began with the enlargement of Sweden, Austria and Finland. You got very heavy use of trilogues then for the second reading. It then moved to the first reading and you found similar proportions, really from 2004 onwards. They increased a little bit; they went from about 30% to between 70% and 80% now.

The challenges with trilogues are numerous. First, there is evidence from a Dutch academic, Rik de Ruiter, who looked at British and Dutch Parliaments and found that, if things were decided at first reading rather than later in the process, there was evidence of less parliamentary engagement. I am talking about domestic parliamentary engagement. Clearly it telescopes the whole process. Instead of these eight weeks being when the Council has a first look, it is the eight weeks when the thing is finally decided. That has been ameliorated a bit by the Barroso initiative, which tries to get to the information even before the formal proposal.

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 limitée, 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 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.

Q583 Chair: On the principle of limitée, you may or may not know that I was actually, on an occasion at COSAC, given a leaked document and a limitée paper, which was incredibly important in the context of the economic convulsions that were going on at the time.
and the proposals for bailouts. I was able—because of our procedures here in the House of Commons, irrespective of any attempt to impose a limited requirement on me—to raise it as an urgent question with the Speaker, who gave authority for the matter to be exposed in the House of Commons. It was rather an awkward way of having to do it, but that did happen on that occasion.

What I would also like to ask—this is a more general question, because we are getting to the end of our time now—is whether there are other professors of law and others who have engaged in a dialogue with you about your views. You have a very clear view based on certain principles, and I just wondered whether there are others who have written to you or raised questions with you and challenged the underlying arguments that you are putting forward.

Professor Chalmers: My final research on this is not published. I put out the initial findings because there is a public debate at the moment going on about both the UK’s position within the EU and the role of national Parliaments. My research is not fully published, so it is all a bit premature. What has happened when I have given presentations and courses is some people have said the argument you have raised, Chair: “This is what the Court of Justice says; it believes in the primacy of EU law.” Other arguments that have been raised are, “Well, if you allowed national parliaments to disapply EU law, would you get some retaliatory race to the bottom?”, and I am sceptical about that for a number of reasons as well. Some people liked my proposal for a citizens’ initiative and others did not. It tends to be whether one likes citizens’ initiative or not.

Could I just make one point here about trilogues? Sorry, I rambled off in the previous answer to your question. On trilogues, you mentioned the point about consensus that Simon Hix had raised. The figure he gave was for all legislative procedures. For qualified majority, and these are the figures from VoteWatch, 65% was consensus and 35% no consensus. The reality is that I suspect all the ones that are consensus have to be agreed by trilogue. It is a condition for the trilogue that there is consensus. When you are looking at the first reading ones, that is when the consensus takes place. If they do not have consensus at trilogue, you then move to a vote later one. The consequence of that is that you have a Commission proposal on which a consensus will emerge, but national Parliaments may not know about it and certainly cannot expose it to their publics. There is the problem that you raised that what happens is that these consensuses have a veto, but you do not as a national Parliament. You will know this very well. You can ask for a little, but you cannot assert too much. That is the basis of consensus. The issue you raise, Chair, is about whether a national Parliament could stop certain things, if push can to shove. In some circumstances, it could but, in many circumstances, it would be politically unwise for it to do so.

Chair: I now have one last thought, which is a question regarding the strengths and weakness of the House of Commons scrutiny system but, because of the time constraints, if you do not mind, I am going to ask you if you would be kind enough to do us a note on these. They have been covered by other evidence. In brief, they are what do you think about: sifting by the European Scrutiny Committee; debate in ad hoc European committees; policy analysis by departmental Select Committees; and the question of key matters being debated on the Floor of the House? I would also be interested if you were able to give a note on how the disapplication procedure would work in practice, given the fact that you would need primary legislation to give effect to it, so that the consequences of a decision or resolution of the House of Commons, or a motion that had been passed, would actually work in practice. If you could do that, it would be very much appreciated, as indeed is your attendance today, for which we are extremely grateful. Thank you very much for coming.